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MANUAL
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Indian Military Law

1911



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(Amended up to the end of June 1929.)

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PREFACE TO THE FIRST EDITION.

THE want of an official manual of Indian military law has been much felt in the past, and the changes which will shortly be introduced into that law when the Indian Army Act, 1911, is brought into force furnish a suitable opportunity for the appearance of such a work. The present volume has therefore, with the approval of the Government of India, been prepared in the Judge Advocate General's Department.

Part I contains a history of the law relating to His Majesty's Indian Forces, with a general account of that law and its application under the Indian Army Act, 1911. A chapter on the law of evidence applicable to courts-martial under Indian military law is added; subsequent chapters deal with such offences against the ordinary criminal law of India as are likely to engage the attention of these courts, and with other legal matters a knowledge of which may be useful to officers and soldiers of the Indian Army.

Part II consists of a reprint of the Indian Army Act, 1911, and the Statutory Rules issued thereunder. To both Act and Rules are added copious notes which will materially help courts and individual officers concerned in the administration of Indian military law.

In Part III will be found the text of certain Acts, or portions of Acts, of the Indian legislature which are either referred to in the earlier parts of the manual, or which are not generally accessible to military officers in India.

Part IV contains all "notifications" issued by the Governor General in Council under the Indian Army

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MANUAL OF INDIAN MILITARY LAW

PART I.

CHAPTER I.

INDIAN MILITARY LAW—ITS ORIGIN AND EXTENT.

(1) *Introductory.*

1. The Indian Army sprang from very small beginnings. Origin of the Indian Army. Guards were enrolled for the protection of the factories or trading posts which were established by the Honourable East India Company at Surat, Masulipatam, Armagon, Madras, Hooghly and Balasore in the first half of the seventeenth century. These guards were at first intended to add to the dignity of the chief officials as much as for a defensive purpose, and in some cases special restrictions were even placed by treaty on their strength, so as to prevent their acquiring any military importance. Gradually, however, the organisation of these guards was improved and from them sprang the Honourable East India Company's European and native troops. Both of these steadily increased in numbers, until in 1857, when the native army reached its maximum strength, it numbered (including local forces and contingents, and a body of 38,000 military police) no less than 311,033 officers and men.¹

2. Statutory provision was first made for the discipline of the Honourable East India Company's troops by an Act² passed in 1754 for "punishing Mutiny and Desertion of officers and soldiers in the service of the United Company of Merchants of England trading to the East Indies, and for the punishment of offences committed in the East Indies, or at the Island of Saint Helena." Section 8 of this Act empowered the Crown to make E.I. Company's Mutiny Act

originally intended for Europeans only. In the absence of any other code, however, the Governments of Bengal, Madras, and Bombay seem to have applied these articles, with such modifications and omissions as appeared necessary, to the bodies of native troops maintained by them, of which the present Indian Army is the descendant. In 1813, owing to doubts having arisen as to the legal validity of the existing arrangements for

¹ Imperial Gazetteer of India, 1907, Vol. IV. Ch. XI.

² 27 Geo. II., Cap. 5.

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the discipline of the native armies, provisions were inserted in the Act³ which was passed in that year to extend the Company's privileges for a further term, which legalised the existing system and gave power to each of the Governments of Fort William, Fort Saint George and Bombay to make laws, regulations, and Articles of War for the government of all officers and soldiers in their respective services who were "natives of the East Indies or other places within the limits of the Company's Charter". It was further provided in 1824⁴ that such legislation should apply to the native troops of each presidency, wherever serving, and whether within or beyond His Majesty's dominions.

Each Presidency frames its own code

3. Under the statutory sanction of these two enactments a military code was framed by the government of each presidency and put in force as regards its own troops. These codes still followed to a great extent the Articles of War then applicable to the Company's Europeans, but the only punishments awardable to native officers seem to have been death, dismissal, suspension, and reprimand, and to native soldiers, death and corporal punishment. Transportation and imprisonment were not awardable.

(iii) *The Articles of War.*

Government of India Act, 1833, and the "Articles of War."

4. By section 73 of the Government of India Act, 1833,⁵ the power to legislate for the whole native army was restricted to the Governor General in Council, and laws so made were "Articles of War" for the native officers and soldiers of the East Indies or other

places within the limits of the Company's Charter" of the earlier legislation. This is confirmed by the fact that in later legislation⁶ the existence in India of three military codes is recognised—*i. e.*, that of the Queen's troops, that of the Company's Europeans, and that of the Company's troops who are "natives of the East Indies or other places within the limits of the Company's Charter". Under the powers conferred upon it by the Act of 1833 the Indian Legislature for the first time provided a common code for the native armies of India in 1845 "Articles of War" for those armies being enacted by the Governor General in Council as Act XX of that year. This Act was shortly after repealed and replaced by Act XIX of 1847 which, having been frequently amended⁷ in the intervening period, was in its turn repealed by Act XXIX of 1861 (an Act to consolidate and amend the Articles of War for the government of the Native Officers and soldiers in Her Majesty's Indian Army). This was repealed by Act V of 1869 ("the Indian Articles of War") which replaced it. In the preamble to this Act reference is for the first time made to "native officers, soldiers, and other persons in Her Majesty's Indian Army," thus recognising the existence of what are commonly known as "followers".

³ 53 Geo. III, Cap. 155, sections 96 and 97.

⁴ 4 Geo. IV, Cap. 81, section 63.

⁵ 3 and 4 Will. IV, Cap. 85.

⁶ 7 and 8 Vic., Cap. 18; 12 and 13 Vic., Cap. 45.

⁷ Acts of Governor General in Council—VI of 1850, XXXVI of 1850, III of 1854, X of 1856, VIII of 1857, XXVII of 1857, and VI of 1860.

5. The amalgamation of the three native armies into one in 1895 necessitated considerable amendments in the "Indian Articles of War." These amendments were effected by Act XII of 1894 and the Indian Articles of War, as altered by this Act, and by various minor amending Acts,* furnished the statutory basis of the Indian military code until 1911. As time went on, however, and the Indian Army began to take its share in the imperial responsibilities of the British Army, it was found that an Act originally framed for three separate local forces, each serving as a rule in its own Presidency, failed to provide adequately for the discipline and administration of that army under modern conditions. Owing also to the mass of amendments super-imposed on the original articles, these were often difficult to understand, and sometimes even self-contradictory.

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Amendment of
"Articles" in
1894.

6. The amendment of the Indian Articles of War was therefore again taken up in 1903, but the consideration then given to the subject showed that a new consolidating and amending Act would be necessary, any further amendment of the articles of 1869 being only likely to accentuate the existing confusion. A Bill was accordingly drafted consolidating the existing law as to the Indian Army into one simple and comprehensive enactment and adding such provisions as experience had shown to be necessary. This was passed into law on the 16th March 1911 as the "Indian Army Act" and came into force on the 1st January 1912. All previous Acts dealing with the subject were repealed by section 127 of the Act. Amendments subsequently made by various minor amending Acts† have been incorporated in this edition.

The Indian
Army Act,
1911.

7. During the war 1914-18 temporary Acts‡ were passed to provide for the suspension of sentences. These measures were found to be beneficial, and on the 23rd March 1920 a permanent act to provide for the suspension of sentences of imprisonment or transportation passed by courts-martial on persons subject to the Indian Army Act, which repealed the temporary Acts, came into force. This Act which is known as the "Indian Army (Suspension of Sentences) Act"§ has to be read as one with the Indian Army Act. The Act is reprinted in full in Part III with notes. For further information see Chapter IV.

The Indian
Army (Suspension of Sentences) Act, 1920.

(iii) Present Code.

8. The present military code of the Indian Army is thus contained in the Indian Army Act, the Indian Army (Suspension of Sentences) Act and certain rules and other matters which latter, being made in pursuance of the Indian Army Act by authorities therein empowered to do so, have the force of law. Examples of this latter class of "subordinate legislation" are the Rules framed by the Governor General in Council under section 113 of the Indian Army Act, and those as to "minor

Rules and other
"subordinate
legislation."

* Acts of Governor General in Council, XII of 1891, I of 1900, I of 1901, IX of 1901, XIII of 1903, and V of 1905.

† Acts of Governor General in Council, XV of 1914, X of 1917, XI of 1918, XIII of 1919, II of 1920 and XXVII of 1920.

‡ Acts of Governor General in Council, IV of 1917 and XVIII of 1918.

§ Act of Governor General in Council XX of 1920.

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punishments" contained in Regulations for the Army in India, which derive their statutory force from orders issued by the Commander-in-Chief in pursuance of section 20 of the Indian Army Act.

Persons permanently subject to Indian Military law.

9. We have now to consider what persons are made subject to this code.

The Regular Forces include the Indian Army,¹² and all persons in the Regular Forces are *prima facie* subject to the Army Act,¹³ i.e., to the code of the British Army. Such of the Regular Forces, however, as are officers, soldiers or followers in His Majesty's Indian Forces are, if "natives of India" made subject to Indian military law¹⁴ and are, to be tried and punished in accordance with that law. "Natives of India" are, for the purposes of the Army Act, defined¹⁵ as "persons triable and punishable under Indian military law,"—which is, in its turn, defined¹⁶ as "the Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force under the authority of the Government of India." The position therefore is that those persons in His Majesty's Indian Forces for whom the Indian legislature, acting within the extent of its legislative powers, has provided a military code, are subject to that code and are tried and punished in accordance with it instead of in accordance with the Army Act. The Indian legislature had, by section 73 of the Government of India Act, 1833,¹⁷ referred to above, power to make laws for all "native officers and soldiers"—that is for all persons permanently subject to military law and regularly commissioned, appointed, or enrolled into the military service of the Crown in India who are "natives of the East Indies or other places within the limits of the Company's Charter"—in fact for all Asiatics in the Indian Army.

Section 73 of the Government of India Act, 1833, has been repealed and by section 65 (1) (d) of the Government of India Act,¹⁸ which replaced it, the Indian legislature is empowered to make laws for the government of officers, soldiers and followers in His Majesty's Indian Forces which laws shall, as in the Act of 1833, apply to them at all times and wherever serving. Having regard to the history of the provision and to the fact that the Government of India Act purports to do no more than consolidate the existing law, Asiatic officers, soldiers and followers are, clearly intended and only such are, in fact, commissioned, appointed or enrolled under the Indian Army Act. Acting under the powers thus conferred and continued the Indian legislature has applied its military code to the following classes, wherever serving¹⁹.—

(1) Indian officers, who are defined²⁰ as persons commissioned, gazetted or in pay as officers holding an Indian rank in His Majesty's Indian Forces.

¹² A. A., section 190 (5).

¹³ A. A., sections 175 (1), 176 (1).

¹⁴ A. A., section 190 (2) (a).

¹⁵ A. A., section 190 (22).

¹⁶ A. A., section 189 (2) (b).

¹⁷ 3 and 4 Will IV, Cap. 85.

¹⁸ 5 and 6 Geo V, Ch. 61 as amended by 6 and 7 Geo V, Ch. 37 and 9 and 10 Geo V, Ch. 191.

¹⁹ I. A. A., section 2 (1) (a) (b).

²⁰ I. A. A., section 7 (1).

(2) Warrant officers, who are defined²¹ as persons appointed, gazetted or in pay as Indian warrant officers in His Majesty's Indian Forces

(3) Persons enrolled under the Indian Army Act, or any previous Act which it superseded

10. The persons commonly known as "followers" are not ordinarily subject to Indian military law, unless they have been enrolled under the Indian Army Act, but it is obviously necessary that they and other civilians who accompany the army should be subject to military discipline on active service and in certain other circumstances. Accordingly we find that the Indian Army Act is also²² applied to—

Persons temporarily subject to Indian military law.

"Persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces."

The above provision does not operate so as to subject Europeans, British or foreign, to Indian military law when they accompany His Majesty's Forces under the circumstances mentioned. Such persons are however subject to the Army Act (British) when they accompany these forces on active service.²³ Its operation as to non-Europeans who are not native Indian subjects of His Majesty is in some cases doubtful, and may depend on the employment of the person concerned and the locality of the service. Any civilian, however, who is on active service with a British-Indian force, and is not subject to the Indian Army Act, will be subject to the Army Act,²⁴ so that no one will escape entirely from military discipline. Further information regarding civilians temporarily subject to the Indian Army Act will be found in Chapter VIII.

11. The position of other military and semi-military bodies such as the Indian State Forces, the Military Police, the Frontier Militia, and Levies, will be considered in another chapter.²⁵

Other military bodies in India.

CHAPTER II.

THE INDIAN ARMY ACT

(i) Application of the Act.

1. This chapter is intended to give a general account of the Indian Army Act and to show its scope and purpose. Certain explanations of a general character which would be out of place in the notes to particular sections, are also contained in it. For a detailed explanation of the Act reference should however be made to these notes

Scheme of chapter.

²¹ I. A. A., section 7 (9)

²² I. A. A., section 2 (1) (c). See also Chapter VIII.

²³ A. A., sections 175 (7), (9) 176 (9), (10)

²⁴ See Chapter VIII

they arise, and in accordance with local circumstances, without the necessity for fresh legislative action to meet every new development. The want of a similar provision caused grave inconvenience under the former "Indian Articles of War."

(i) Definitions.

5. All the definitions in section 7 must be understood as being subject to the reservation in the opening clause of that section. i.e., they are not to be read into the Act if "there is something repugnant in the subject or context" An instance of such a repugnance will be found in section 92 of the Act. "Officer" in this section cannot be used in the restricted sense indicated in definition (5), as such a meaning would be repugnant to the context, and must therefore be taken in its wider meaning of "official" It will be noticed that, in some cases, terms are defined in section 7 as "meaning" such and such, and in others as "including" some other person or thing. In the former case the term defined is used as a synonym for a longer or more cumbersome expression, but the legal effect of the enactment would not be altered if the longer expression were used throughout instead of the shorter For instance, if, wherever "officer" occurs in the Indian Army Act (but subject to the reservation mentioned above), the words "a person holding a commission in His Majesty's land forces or a person commissioned, gazetted or in pay as an officer holding an Indian rank in His Majesty's Indian Forces" were used instead of that word, and wherever "non-commissioned officer" occurred the words "a person attested under this Act holding an Indian non-commissioned rank in His Majesty's Indian Forces" were used, the legal effect of the enactment would not differ from what it now is. The effect of those definitions, or parts of definitions, which declare that a term "includes" something else is somewhat different. Here the result is that wherever the law, as it stands, applies to the class of persons or things, indicated by the class or classes who are applying of the English language to the latter. For instance the expression "non-commissioned officer" does not, as it stands, necessarily cover an acting non-commissioned officer, but the result of the concluding words of definition (4) is that, wherever the words "non-commissioned officer" occur in the Act, they are also to be taken as applying to acting non-commissioned officers, and an acting non-commissioned officer cannot therefore be subjected to imprisonment as a summary award under section 20 Similarly the words "Judge-Advocate General" do not, as they stand, indicate a Deputy Judge-Advocate General, but the explanation to section 85 of the Indian Army Act shows that, wherever in that section a power or duty is conferred or imposed on the Judge-Advocate General in India a similar power or duty is conferred or imposed on each Deputy Judge-Advocate General.

(ii) Enrolment and Attestation

6. Everyone who is permanently subject to Indian military law (except Indian officers and warrant officers) is subject to that law by virtue of his "Enrolment" This process, and the

Enrolment
Attestation
explained.

Ch. II.

subsequent attestation of certain enrolled persons, is described in Chapter II and in the Rules made by the Governor General in Council under the powers therein conferred upon him. The principle underlying these provisions is that no person should be permanently subjected to an exceptional and severe code, like that contained in the Indian Army Act, without a definite act on his part, such act being susceptible of easy proof. "Enrolment" is therefore made a definite act recorded in a formal document, the enrolment paper which is itself made legal evidence of the facts stated in it,²⁰ and which shows clearly all the conditions of the bargain which the enrolled person has made with the State. In these respects it resembles the British soldier's "attestation." The latter term is, in Indian military law, applied to the administration to the enrolled person of the oath or affirmation of military fidelity. It forms no part of the process of enrolment and this oath or affirmation is only administered to combatants and the higher classes of non-combatants. The ceremony takes place when the candidate is fit for duty, or has completed a prescribed period of probation, and confers on the person admitted to it a certain status and the privilege of not being ordinarily dischargeable without reference, at least, to his Brigade Commander.²¹ Only attested persons can rise to non-commissioned rank in the Indian Army.²² Under the old law "enrolment" (the entry of a person's name with his consent on the list of a corps or department) did not involve any liability to "general service"—i.e., there was no obligation upon the enrolled person to "go wherever he was ordered by land or sea," which latter obligation attestation carried with it. It was on this account that a practice set in of attesting everyone, menials included, who it was intended should accompany the army into the field. There is no such necessity under the present law as enrolment under the Indian Army Act is, as a rule, for general service though special conditions of enrolment can, if necessary, be "prescribed" to meet special cases. It has therefore been found possible to restrict attestation, as indicated above, to combatants and those higher classes of non-combatants whom the Government of India considers deserving of being treated on the footing of combatants.²³ The enrolment paper referred to above contains an official record of the bargain made with the enrolled person on behalf of the State, and the conditions of that bargain cannot be altered except with the consent of the person concerned. An instance of such consent is when a man, on being trained in special duties, agrees to serve for longer than the term for which he originally engaged. Such a variation of the conditions of service is therefore recorded on the man's enrolment paper and signed by him. No separate attestation document is required for the classes who are attested. The fact of attestation is in each case recorded on the enrolment paper and authenticated by the signature of the attesting officer.

²⁰ I. A. A., section 91.

²¹ Rule 13.

²² I. A. A., section 7 (4).

²³ For a list of these classes see Rule 8.

(iv) *Dismissal and Discharge.*

Ch. II.

7. --

tary se
under

their dismissal and discharge, as well as for the dismissal and discharge of all others who are permanently subject to Indian military law, i.e., Indian officers and warrant officers. A person once subject to Indian military law as an Indian officer, warrant officer or person enrolled under the Act, remains so subject until he dies or is formally dismissed or discharged. Ordinary discharge (the process by which a person ceases to be subject to military law) is dealt with in section 16 of the Act and in Rules 10, 12, and 13. The chief points to notice are that (1) the discharge must in every case be authorised as provided in Rule 13, (2) the discharge will take effect either from some specified date subsequent to the date on which it was authorised or, if the authority authorising the discharge did not at the time specify the date from which it was to take effect, from the date on which it was authorised or from the date on which the person discharged ceased to do military duty whichever was the later date, and (3) the discharge of a person entitled under the conditions of his enrolment to be discharged must be carried out with all convenient speed, i.e., without unreasonable delay. Dismissal, i.e., penal discharge, is legislated for in sections 13 and 14 of the Act and in Rule 12 and also (as a court-martial punishment) in section 43 and in Rule 154. It involves under existing Regulations, the loss of any pension or gratuity which the dismissed person may have earned. No authority except the Governor General in Council, the Commander-in-Chief in India, or a General or Summary-General Court-martial can dismiss an Indian Officer. Dismissal otherwise than by sentence of court-martial takes effect as described above for discharge.²⁴ Dismissal by sentence of court-martial takes effect, according to circumstances, as described in Rule 154. The provisions of the Indian Army (Suspension of Sentences) Act, 1920, require, however, to be considered where a sentence of transportation or imprisonment which is combined with the punishment of dismissal is suspended or remitted under that Act or where a sentence of imprisonment for less than three months which is combined with dismissal is put into execution and there is a former sentence under suspension. They must also be considered when an offender is dismissed or discharged otherwise than by sentence of court-martial, if there is a suspended sentence on which he has not been committed. Every Indian officer, warrant officer or enrolled person who is dismissed or discharged must be furnished by his commanding officer with a discharge certificate²⁵ which should if possible, invariably be furnished to him on the date from which the dismissal or discharge takes effect. If it is impossible the discharge certificate must be furnished with the least possible delay and in the meantime the person should be given a copy of the regimental (or other) order in which his dismissal or discharge was notified.

²⁴ Rule 12.²⁵ I. A. A., section 17 and Rule 17.

Ch. II.

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³⁰ I. A. A., section 9L.³¹ Rule 13.³² I. A. A., section 7 (1).³³ For a list of these classes see Rule 8.

(iv) *Dismissal and Discharge.*

Ch. II.

7. Having thus provided for the formal entry into the military service of the Crown of those persons who are enrolled under the Indian Army Act, that Act goes on to legislate for their dismissal and discharge, as well as for the dismissal and discharge of all others who are permanently subject to Indian military law, i.e., Indian officers and warrant officers. A person once subject to Indian military law as an Indian officer, warrant officer or person enrolled under the Act, remains so subject until he dies or is formally dismissed or discharged. Ordinary discharge (the process by which a person ceases to be subject to military law) is dealt with in section 16 of the Act and in Rules 10, 12, and 13. The chief points to notice are that (1) the discharge must in every case be authorised as provided in Rule 13, (2) the discharge will take effect either from some specified date subsequent to the date on which it was authorised, or, if the authority authorising the discharge did not at the time specify the date from which it was to take effect, from the date on which it was authorised or from the date on which the person discharged ceased to do military duty whichever was the later date, and (3) the discharge of a person entitled under the conditions of his enrolment to be discharged must be carried out with all convenient speed, i.e., without unreasonable delay. Dismissal, i.e., penal discharge, is legislated for in sections 13 and 14 of the Act and in Rule 12 and also (as a court-martial punishment) in section 43 and in Rule 154. It involves under existing Regulations, the loss of any pension or gratuity which the dismissed person may have earned. No authority except the Governor General in Council, the Commander-in-Chief in India, or a General or Summary-General Court-martial can dismiss an Indian Officer. Dismissal otherwise than by sentence of court-martial takes effect as described above for discharge.²⁴ Dismissal by sentence of court-martial takes effect, according to circumstances, as described in Rule 154. The provisions of the Indian Army (Suspension of Sentences) Act 1920, require, however, to be considered where a sentence of transportation or imprisonment which is combined with the punishment of dismissal is suspended or remitted under that Act or where a sentence of imprisonment for less than three months which is combined with dismissal is put into execution and there is a former sentence under suspension. They must also be considered when an offender is dismissed or discharged otherwise than by sentence of court-martial, if there is a suspended sentence on which he has not been committed. Every Indian officer, warrant officer or enrolled person who is dismissed or discharged must be furnished with a certificate²⁵ to him on effect. If furnished, the person should be given a copy of the regimental (or other) order in which his dismissal or discharge was notified.

²⁴ Rule 12.²⁵ I. A. A., section 17 and Rule 11.

Ch. II.

(v) *Summary Reduction, etc.*

Summary
reduction and
minor punish-
ments.

8. Chapter IV deals with the summary reduction of non-commissioned officers, including acting non-commissioned officers, and with punishments which are of a summary nature. As to the former it need only be mentioned that any non-commissioned officer, including an acting non-commissioned officer,³⁶ can be reduced to a lower grade or the ranks by the officer commanding a brigade or by any higher military authority and that an acting non-commissioned officer can also be reduced by his commanding officer.³⁷ Such reduction may, in each case, be ordered either as a punishment or simply because the non-commissioned officer or acting non-commissioned officer has been found to be unsuited to the position in which he was placed. "Minor punishments" and the officers who can award them have been legislated for in orders issued by the Commander-in-Chief under the authority conferred upon him by section 20. These punishments are set forth in Regulations for the Army in India. Were it not that misunderstandings on this point have actually occurred, it might be considered unnecessary to remark that these punishments should only be awarded magisterially and after due investigation of the case in the presence of the accused.

Losses of arms.

9. Section 21 permits of collective responsibility for losses of arms being legally enforced. Experience has shown that such responsibility is the best safeguard for the security of the arms of a company. The amount and incidence of fines levied³⁸ under this section, and the procedure to be observed in such cases, are regulated by Rules 156 and 157 of the "Indian Army Act Rules." Section 22 provides for the punishment of civilian followers in camp and at frontier posts, while the remainder of the chapter deals with the powers and duties of provost marshals.

(vi) *Offences.*

Military and
civil offences.

10. Chapter V of the Indian Army Act classifies under various heads and defines the military and civil offences contained in the late Indian Articles of War.³⁹ These offences have been defined in the same, or nearly the same, language as that of the Articles. This language has been generally adhered to, though not always the best possible, as it was considered inadvisable to change the forms of expression with which the army had become familiar. In only a few cases therefore, where the language of the articles was obscure or misleading,¹ has any material alteration been made. The principle of classification adopted in the British Army Act has been followed in the arrangement of the present Act. Offences of a similar character are grouped together and the groups have, as regards military offences, been arranged in such an order as to emphasise their relative military importance. It must be remembered that Chapter IV of the Indian Penal Code ("General Exceptions")⁴⁰ applies to offences

³⁶ I. A. A., section 7 (4)

³⁷ I. A. A., section 19 (2)

³⁸ I. A. A., section 113 (f) (b)

³⁹ Act V of 1863

⁴⁰ See Part IV.

under special laws, such as the Indian Army Act.⁴¹ The definitions of all these offences must therefore be read as subject to the above "general exceptions." Thus, if a non-commissioned officer is charged under section 39 (b) with striking a sepoy and proves that he only did so in the exercise of his right of private defence, he will be entitled to an acquittal (I P. C., section 96). Similarly, if a person charged with any offence under the Indian Army Act is proved to have committed the offence while incapable, by reason of insanity or involuntary intoxication, of knowing the nature of his act or that it was either wrong or contrary to law, he is entitled to the benefit of section 84 or 85 of the Indian Penal Code, as the case may be, and cannot be punished for what he has done.

(vii) Punishments.

11. It will have been noticed that in Chapter V a maximum penalty is assigned to each offence or group of offences, and that courts can award that penalty "or such less punishment as is in this Act mentioned." This is followed up, in Chapter VI, by full directions as to the award of punishments and their nature. The opening section of this chapter details the punishments which are ordinarily awardable by courts-martial and classifies them in order of severity. A court can thus, subject to the limits imposed by the Act upon its own powers,⁴² sentence an offender to the maximum penalty assigned to the offence of which it has convicted him or to any other punishment appropriate to his class, which stands below it in the scale given in this section. As a rule a court-martial can only award one penalty (section 44), but, by section 47, an exception is made as to certain punishments which may be combined with each other or with any other punishment. Section 45 specifies the cases in which field punishment can now be awarded as a court-martial sentence.

System on
which punishments
are arranged.

(viii) Penal Deductions.

12. Chapter VII permits of certain penal deductions being made from the pay and allowances of persons subject to Indian military law, and follows, to a great extent, the corresponding provisions of the Army Act.⁴³ As in that Act, a wide range of deductions which may be made is indicated, the exact deductions which, within these limits, shall actually be enforced, being left to regulations. Throughout this chapter the words "pay and allowances" are used instead of "ordinary pay," which is the Army Act term. They cover staff pay and other allowances, deductions from which are, as regards the British soldier, legalised by Royal Warrant. In the Indian Army, on the other hand all such matters are provided for by regulations, which, unlike the Royal Warrant, have not themselves the force of law. So long, however, as the deductions ordered in these regulations do not exceed the limits laid down in this chapter as to what may be deducted, the position is legally as secure as under the Home procedure.

Penal deductions.

⁴¹ I P. C., section 40.

⁴² I A. A., sections 73 and 76.

⁴³ I A. A., section 137, et seq.

Ch. II.

(ix) *Courts-martial; their constitution and jurisdiction.*

Four kinds of
court-martial.

13. In Chapter VIII are collected all the provisions of the Indian Army Act relating to courts-martial. It deals, among other matters, with the constitution and jurisdiction of these courts as well as with the more important points connected with the procedure to be observed at trials before them, less important points being left to be provided for in statutory, Rules framed under the Act. The chapter begins by enumerating the four different kinds of court-martial known to Indian military law, viz. :—

General Courts-martial,

District Courts-martial,

Summary General Courts-martial, and

Summary Courts-martial.

The list is identical with that in the Indian Articles of War, as amended in 1894, with the exception of regimental courts-martial which, owing to the existence of the summary court-martial, were rarely held and have therefore been abolished. The general and district courts-martial correspond to the tribunals under the Army Act which are similarly designated, and the summary general court-martial to the field general court-martial, the only important differences being in the numbers of members required in some cases, and in the circumstance that the president is not, in Indian Army Act trials, appointed by name, the senior officer sitting as president as a matter of course.⁴¹ Minor differences in procedure will be noticed in the chapter dealing with courts-martial.⁴²

The summary
court-martial.

14. The summary court-martial is peculiar to the Indian Army and therefore calls for more detailed notice. These courts are of comparatively recent origin and were not introduced into the regular army till after the mutiny of the greater part of the Bengal Army in 1857. The discipline of the regular Indian army had, for some time before that catastrophe, seriously deteriorated and it was noticed that the irregular troops, and more especially the Punjab Irregular Force, were in this respect in a much better state than their comrades of the regular army. After the suppression of the mutiny the reason for this difference was sought, and it was found to be largely due to the position of comparative insignificance occupied by the commandant of a regular regiment, who had practically no power to punish or reward his own men. In contrast to this, the commanding officer of a regiment of the Punjab Irregular Force had almost absolute power in that regiment, and could, under the system prevailing in the Force *himself* deal promptly and effectively with all military offenders. This system appears to have had its origin in the union, frequent in those days on the frontier, of the functions of deputy commissioner, political officer, and military commandant, in one and the same person. This union enabled the commanding officer, as such, to convict and sen-

⁴¹ I. A. A. section 77

⁴² Chapter IV.

tence a military offender, and thereafter to issue a warrant for the execution of his sentence which was respected by the civil and prison officials as emanating from him in his civil and magisterial capacity. When a new Indian Army came to be organised on the ruins of the old, it was realised that the bands of the regimental commanding officer must be strengthened if the evils which had led to the practical disappearance of the Bengal Army were to be avoided. With this object summary courts-martial were at first introduced tentatively, and were in 1869 definitely established as part of the legal machinery of the Indian Army.⁴⁶ They have proved peculiarly suited to the conditions of that army and are now the tribunals by far the most frequently utilised in it for the trial of military offenders.

15. Having thus enumerated its tribunals the Act goes on to arrange for their constitution. A general, district or summary general court-martial must in the first place be convened by an officer properly empowered to do so. The Commander-in-Chief in India has statutory power to himself convene (and confirm) general courts-martial and to issue warrants empowering other officers to do the same.⁴⁷ The Commander-in-Chief, himself, and any of these officers, can convene (and confirm) district courts-martial and can issue warrants empowering other officers to do the same.⁴⁸ The authorities who can convene (and, where necessary, confirm) summary general courts-martial are detailed in section 62. A summary court-martial can be held by any of the officers specified in section 64. The definition of "commanding officer" [section 7 (6)] must be remembered when interpreting this, and a summary court-martial can therefore only be held by a British officer, who is in actual command of one of the bodies mentioned in section 64. The jurisdiction of courts-martial is next dealt with, second trials prohibited, and conflicts of jurisdiction between civil and military courts provided for. Section 71 is somewhat technical in its language, but the result is that, as stated in the side note, "trial by court-martial is no bar to subsequent trial by criminal court." The criminal court which convicts a person who has been already punished under military law for the same offence, or on the same facts, is however bound to have regard to that punishment when passing its sentence.

Constitution
of courts-
martial.

(x) Powers of Courts-martial

16. Sections 72 to 76 deal with the powers of courts-martial as to persons, offences, and punishments. A general or summary general court-martial can try any person subject to Indian military law for any offence, a district court-martial can try any person, except an Indian officer, for any offence, while a summary court-martial is restricted both as to persons and offences, though the restriction as to offences can be removed by superior authority. Their powers of punishment also vary, a general or summary general court-martial has full powers, a district court-martial cannot award a higher

Powers of
courts-martial.

⁴⁶ Act V of 1869.

⁴⁷ 1 A. A., sections 53 and 95.

⁴⁸ 1 A. A., sections 55 and 96, for forms of warrants see Part II.

Ch. II.

punishment than two years' rigorous imprisonment, while a summary court-martial is limited to one year. Sections 77 to 87, supplemented by the greater part of the Rules issued under section 113, describe the procedure to be observed at trials by court-martial under the Indian Army Act, and will be considered together in a later chapter. Section 88 directs that the Indian Evidence Act shall, subject to the provisions of the Indian Army Act, apply to the proceedings of all courts-martial held under the latter Act. These provisions are contained in sections 89 to 93. For the powers of courts-martial to make certain orders in respect of property produced before them or regarding which an offence has been committed see para. 19 of this chapter.

(xi) *Courts-martial, their confirmation, etc*

Confirmation,
etc.

17. The chapter concludes by making confirmation necessary for the validity of all findings and sentences by general and district courts-martial and of certain findings and sentences of summary general courts-martial. The findings and sentences of summary courts-martial do not require confirmation, but the approval of superior authority is required in the case of summary courts-martial held by junior officers in time of peace. Provision is made in section 103 for a valid sentence being substituted for an invalid one by certain of the higher military authorities, when such a course appears to be necessary. The officer who has to confirm a sentence of transportation or imprisonment should bear in mind the provisions of the Indian Army (Suspension of Sentences) Act, and should, if he is himself a superior military authority under that Act, and considers that the sentence ought to be suspended, himself suspend it. If he is not such a superior military authority but considers that the sentence ought to be suspended he should, after adding to his minute of confirmation the direction required by the Indian Army (Suspension of Sentences) Act, the first minute on I. A. F. I* therewith I. A. F. D. 921 the orders of the latter.

(xii) *Execution of sentences.*

Effect of
Prisoners' Act,
1900, committal
warrants.

18. The offender having been duly sentenced, and his sentence, where necessary, confirmed, Chapter IX provides for its execution. The Prisoners' Act, 1900,** renders unnecessary the elaborate provisions as to the execution of sentences of transportation and imprisonment which found a place in the former Articles of War, and all that is now required, in ordinary cases, is to arrange for the transmission of military convicts and prisoners to civil prisons, after which the above-mentioned Act provides for their discipline and, when necessary, their transfer to other such prisons or to convict establishments. Forms of committal warrants under section 107 are provided in an Appendix** to the Indian Army Act Rules as well as warrants for use under section 109 when

* Act III of 1920

** See Appendix IV to these Rules in Part II.

sentences, orders or warrants are set aside or varied. This first class of warrant brings the change, as it affects the prisoner, to the official notice of the superintendent of the civil prison where he is confined and provides for his release or the modification of the punishment to be inflicted upon him. There are several forms of warrant for use in different circumstances, and particular attention should therefore be paid by officers using them to the notes to section 100 where the proper warrant to be used in each case is clearly indicated. The use of a wrong form of warrant might have serious consequences. When an offender whose sentence has been under suspension is subsequently committed on that sentence, by reason of its having been either specifically or automatically along with another sentence under section 7 (b) of the Indian Army (Suspension of Sentences) Act ordered into execution, particular care should be taken in the preparation of the warrant, which should show exactly what is the unexpired balance of the sentence on which the offender is committed.

(xiii) Other provisions

19. The remaining chapters of the Indian Army Act deal with Pardons and Remissions, Statutory Rules, the disposal of the Property of Deceased Persons and Deserters, and miscellaneous subjects, one of which is the disposal of property or documents produced before courts-martial or in their custody, or regarding which any offence appears to have been committed or which have been used for the commission of any offence. The court, the confirming officer or any authority superior to that officer may under the provisions of sections 126A and 126B make certain orders on this subject. Otherwise these chapters call for no remarks in addition to those which will be found in the notes appended to the various sections.

Other provisions of I. A. A.

CHAPTER III.

ARREST AND INVESTIGATION OF CHARGES.

(i) Arrest.

1. Whenever any person subject to Indian military law is charged with an offence he may be taken into military custody,¹ which means his arrest or confinement according to the usages of the service.² Officers, warrant officers and non-commissioned officers are, as a rule, placed in arrest, while other persons are confined in charge of a guard, piquet, patrol, or sentry, or of the provost marshal. If the offence is a slight one, the accused person need not be taken into custody, such cases being generally investigated without this formality. Arrest may be either close or open according to the direction of the officer who ordered it. An officer, warrant officer, or non-commissioned officer in close arrest must not leave his quarters or tent except to take exercise under supervision; if in open arrest, he may be permitted to take exercise at stated periods within certain limits, which are usually the

Military custody of person charged with an offence.

¹ I. A. A., section 123.
² I. A. A., section 7 (121).

Cb. III.

precincts of the regimental lines or camp; he must not however, appear out of uniform, nor at any place of amusement or public resort, nor may he wear sash, sword, belts or spurs. An officer, warrant officer or non-commissioned officer may, if the circumstances of the case require it, be placed in the charge of a guard, piquet, patrol or sentry, or of the provost marshal. An officer, or other person, under arrest may be ordered or permitted to attend as a witness before a court-martial, or before a civil court.

Offender in arrest not to perform military duty.

2. An offender while in arrest is not required to perform any military duty further than may be necessary to relieve him from the care of any cash, stores, etc., for which he is responsible; nor is he permitted to bear arms, except by order of his commanding officer in case of emergency or on the line of march; but if by error he is ordered to perform any duty, his offence is not thereby condoned. Persons who are subject to military law as Indian officers, warrant officers, and non-commissioned officers (see Chapter II, para. 2) may, when charged with an offence, be placed in arrest under the same conditions as persons holding these ranks.

(ii) Investigation of Charges.

Charge to be promptly investigated.

3. The author of an offence taken into military custody by the proper military commanding officer of the accused, who is in every case responsible for the investigation being begun within forty-eight hours of the person being taken into custody unless this seems to him to be impracticable with due regard to the public service. In the latter case he must report the circumstance, and the reason for the delay, to superior authority.⁴⁴

Preliminary investigation.

4. Prior to the appearance before the commanding officer of an alleged offender, a preliminary investigation into his case is generally made by his squadron or company commander, or by the corresponding officer in other branches of the service. If the accused person is not in arrest or confinement, or the case is not one which the commanding officer has reserved for his own disposal, this officer may decide to deal with the case himself by awarding one of the minor punishments within his power or by dismissing it. Any case in which the accused is in arrest or confinement is dealt with by the commanding officer, unless the latter remits it to the squadron or company commander for disposal. Rule 15 (A) of the Indian Army Act Rules applies to this preliminary investigation equally with that before the commanding officer.

Investigation by commanding officer.

5. The manner in which the investigation of charges by the commanding officer is to be carried out is regulated by Rules 15 to 17. This duty requires deliberation, and the exercise of temper and judgment, in the interest alike of discipline and of justice to the accused. The investigation must be in the presence of the accused. After the nature of the offence charged has been made known to him, the witnesses present on the spot who depose to the facts on which the charge is based are examined. The accused must have full liberty of

⁴⁴ I. A. A. Section 124 (5)

⁴⁵ Rule 14.

cross-examination The commanding officer, after hearing what is urged against the accused, will, if he is of opinion that no military offence at all, or no offence requiring notice, has been made out, at once dismiss the charge." Otherwise, he must ask the accused what he has to say in his defence, and whether he has any witnesses to call, and will give him full opportunity both of making a statement and of supporting it by evidence. The commanding officer will then again consider whether to dismiss the case or not. If he decides not to dismiss it he has further to consider which of the courses

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If the
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in the

first instance, adopt (3), the preparation of a summary of evidence, unless he is prepared to certify that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline." In the latter case he can, of course, try forthwith, attaching the above certificate.

6. During the investigation, the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the accused person's guilt, or one which might prejudice him at a subsequent trial. It frequently happens that officers who have been present at the investigation are detailed as members of the court convened in consequence of it; therefore, nothing should be said or done which might, though unconsciously, bias their judgment beforehand.

Caution as to
expressing
opinion.

7. Where a commanding officer adjourns a case for the purpose of having the evidence reduced to writing, the evidence given by any witnesses before him must be taken down in writing in the presence of the accused; the accused must be allowed to cross-examine within reasonable limits, especially if there is any variance between the evidence as taken down and that given on the prior investigation. Any statement made by the accused, which is material to his defence, will also be added in writing, but the accused must be warned that this will be done."

Adjournment
for taking a
summary of
evidence.

8. The evidence and statement, if any (called the summary of evidence), must be taken down in the presence of the commanding officer himself, or of some officer deputed by him. Great care is necessary in the performance of this duty. The difference not infrequently observable between the statements recorded in the summary of evidence and the evidence given before a court-martial may often be traced rather to the hasty or careless preparation of the summary, than to any prevarication or desire to mislead on the part of the witnesses. Moreover a carelessly prepared summary of evidence requiring, as it may do, several references between the convening officer and the commanding officer of the accused before trial can be ordered is a frequent cause of delay in bringing an accused person to trial.

Mode of taking
summary.

⁶⁶ Rule 15 B.

⁶⁷ I. A. A., section 74, proviso.

⁶⁸ Rule 15 (D to G).

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Remand for
court-martial.

9. When the summary of evidence has been taken, the commanding officer must consider it and determine whether or not to remand the accused for trial by court-martial.⁴⁴ It may be that on reading the evidence the commanding officer will come to the conclusion that the case is one which ought to be disposed of summarily. If a court-martial is ordered or applied for, the accused can be kept in arrest or confinement until the charge is disposed of. It is the duty of the commanding officer on reading the summary of evidence to note whether or not the evidence taken down in the summary corresponds with the evidence given at the inquiry before him. If the commanding officer determines to remand the accused for trial by court-martial, he must next consider by what class of court he should be tried. As a general rule this will be a summary court-martial, sanction being previously obtained where such sanction is necessary.⁴⁵ The summary of evidence should be forwarded with the application for this sanction. When applying for a general or district court-martial or for sanction to hold a summary court-martial, a charge-sheet, showing the charges on which it is proposed that the accused should be tried, should be submitted by his commanding officer.

Use of summary
of evidence.

10. The summary of evidence may be used for certain limited purposes at the trial, and also for the purpose of giving to the accused notice of the charge he will have to meet, and to the convening officer of the court, as well as to the president, judge-advocate or superintending officer, notice of the case to be tried. Either the summary itself or a true copy of it must be laid before the court-martial before which the accused is tried. The convening officer in the case of a general or district court-martial should always order a copy of the summary of evidence to be given to the accused if the case is complicated.

Convening
court.

11. An application for a general or district court-martial or for sanction to hold a summary court-martial should usually be disposed of at once; but if the convening or sanctioning officer detects matter showing culpable neglect or improper conduct on the part of the superiors of the accused, he may delay assembling a court, or sanctioning the holding of one, for the purpose of making inquiry. The officer who convenes a general or district court-martial is responsible for the correctness of the charges,⁴⁶ and will, if necessary, revise them after considering the evidence as shown in the summary. The charge-sheet containing the charges, as approved by the officer convening the court-martial, will be sent to the president, judge-advocate or superintending officer,⁴⁷ as well as the summary of evidence or a true copy thereof, and will be laid by him before the court-martial. The prosecutor should have a copy of the charge-sheet and summary, or at least should have access to them.

(iii) Summary power of Commanding Officer.

Minor
punishments
where specified.

12. The power of the commanding officer to punish summarily a person under his command rests on sections 20 and

⁴⁴ Rule 26.⁴⁵ I. A. section 74, proviso.⁴⁶ Rule 27 (4).⁴⁷ Rule 27 (5).

50 (f) of the Indian Army Act. In pursuance of section 20 various minor punishments, and the persons to whom they can be awarded by their commanding officer, have been specified. These, as also certain other lesser punishments awardable by junior officers, will be found in R. A. I. See also the note to section 20 of the Act. When an offender has been punished by his commanding officer, or other such officer, he cannot be tried by court-martial for the same offence. Similarly, he cannot be subjected to a minor punishment for an offence of which he has been acquitted or convicted by a court-martial or a criminal court. For the summary powers of commanding officers of medical and departmental units see para. 2 of Chapter IV.

CHAPTER IV.

COURTS-MARTIAL.

(1) Summary Courts-martial.

1. This court, as being that most "Indian army," will be considered officer remands a person subject to by summary court-martial he must charge is one which he can ordinarily try in this manner without reference to superior authority. If it is one which he cannot ordinarily try without such reference, and he is not prepared to certify that such an emergency as is contemplated in the proviso to section 74 of the Indian Army Act exists, he must submit an application for sanction to try the case by summary court-martial to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender. This application should be accompanied by the summary of evidence and the charge-sheet on which it is proposed to try the accused. On receiving these documents the officer empowered to convene a district court-martial or on active service a summary general court-martial will, if he considers the case should be tried by summary court-martial, inscribe, or cause to be inscribed, on the charge-sheet, his order for trial by that tribunal. In arriving at a decision on this point he should remember that a summary court-martial is the proper court to try all charges against persons amenable to its jurisdiction (i.e., all persons below the rank of warrant officer and under the command of the officer holding the trial) except only those for offences which merit higher punishment than it can award, or which the commanding officer should not be allowed to dispose of because he is personally interested in the case. Any offence, no matter how grave and no matter how interested the commanding officer is in the result, may however legally be tried by summary court-martial provided the proper sanction is given. It is obvious however that sanction should, in such cases as are indicated above, be generally withheld.

⁵¹ See Chapter II, para. 13.

⁵² I. A. A., section 74, proviso.

⁵³ I. A. A., section 75.

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Commanding
Officer of
Medical and
departmental
units.

2. Only a "Commanding Officer" as defined in section 7 (6) read with section 61 of the Act can hold a Summary Court-martial. A Medical Officer commanding a hospital or other medical unit is, for the time being, the Commanding Officer for this purpose of a person subject to the Indian Army Act not belonging to the medical personnel who is a patient in, or is employed in, that hospital or medical unit and may either himself dispose of a charge against such person or refer it for disposal, after the person has left the hospital or medical unit, to the officer commanding the corps, department or detachment to which such person belongs or is attached; but the medical officer in charge of a regimental medical establishment is not, unless that establishment is detached, the Commanding Officer for this purpose of that establishment or of any person who is a patient in, or is employed in, the medical unit to which that establishment belongs. A departmental officer (i.e., Commissary, Deputy Commissary, Assistant Commissary or Senior Assistant Surgeon) is not a Commanding Officer for this purpose unless he has been specified under section 20 of the Act as a Commanding Officer for the purpose of awarding minor punishments.

Assembly of
court.

3. These preliminaries being settled, the accused is warned for trial in the manner provided in Rule 23 and an early date fixed for the assembly of the court. On that date the officer holding the trial, the two officers attending the trial, and the interpreter (if one is considered necessary) assemble and the

rough-
hold-
inter-
preter has been appointed and he is an officer, other than the officer holding the trial, he can perform that duty in addition to attending the court as one of the two officers referred to. The two officers may be both British, both Indian, or one British and one Indian. The first business is the swearing or affirming of the officer holding the trial and the interpreter (if any). "Any evidence which the court or the accused does not understand must be translated. This should be done by a properly sworn or affirmed interpreter" but failure to swear or affirm an interpreter does not necessarily invalidate the proceeding. "It will generally be convenient that the commanding officer should (if competent to interpret in the language of the accused) himself" take the interpreter's oath or affirmation at this stage, so that nothing may be translated to the accused by an unsworn interpreter.

Arraignment of
accused.
Plea of
"guilty."

4. The accused is next arraigned and required to plead to each charge. "If he pleads guilty to any charge the court (i.e., the officer holding the trial) must first see that he understands

⁶⁶ Rule 91

⁶⁷ I A A, section 61 (2)

⁶⁸ Rule 25

⁶⁹ Rule 93

⁷⁰ Rule 133

⁷¹ Rule 93

⁷² Rule 97

the charge and the result of his plea and that he has not pleaded guilty under a misapprehension." If no such impediment appears to exist, his plea is then recorded as the finding of the court. The court then reads the summary of evidence (translating it to the accused if he does not understand it) and attaches it to the proceedings, or, if there is no summary of evidence, takes and records sufficient evidence to enable it to determine its sentence, and the reviewing officer to know all the circumstances of the case. The court then hears anything which the accused has to say in reference to the charge or in mitigation of punishment.⁷²

5. If the accused pleads not guilty, the evidence for the prosecution is first taken, then that for the defence, the accused being allowed to address the court either before or after his witnesses are examined.⁷³ Prosecution witnesses may be cross-examined by the accused, and defence witnesses by the court, each may also re-examine his own witnesses after cross-examination. The officer holding the trial then comes to a finding on the evidence. If the finding on each of the charges in a charge-sheet is "not guilty" it is announced in open court and the accused is released in respect of these charges.⁷⁴

Procedure on plea of "not guilty."

6. If the finding on any charge is guilty, evidence as to the character and service of the accused is taken, or the officer holding the trial records such as of his own knowledge,⁷⁵ and sentence is passed. Even if the accused has been convicted on more than one charge, only one sentence is awarded.⁷⁶ The sentence must be one authorised by the Indian Army Act. These, and the circumstances in which they may be awarded, are detailed in Chapter VI of the Act. The court may pass any sentence up to one of rigorous imprisonment for one year.⁷⁷ It is desirable that sentences of rigorous imprisonment passed upon offenders whose services it is desired to retain should as far as possible be undergone in military custody. A summary court-martial must therefore be careful, particularly when not on active service, to include in a sentence of three months' rigorous imprisonment or less unaccompanied by dismissal a direction that the imprisonment is to be undergone in military custody.⁷⁸

Sentence.

7. The proceedings of a summary court-martial are not open to revision and do not require confirmation, and its sentence should, except as provided in section 101 of the Indian Army Act and section 3 (1) of the Indian Army (Suspension of Sentences) Act be put into execution at once, the offender being also committed, if the sentence is one of imprisonment for three months or more, in respect of any former suspended sentence.⁷⁹ The proceedings should then be sent for review (through the deputy or assistant judge-advocate general of the command, if

Proceedings not open to revision and do not require confirmation.

⁷² Rule 101 (B).

⁷³ Rule 102.

⁷⁴ Rule 104.

⁷⁵ Rule 106.

⁷⁶ I A A., section 85, and Rule 110.

⁷⁷ Rule 110.

⁷⁸ I A A., section 76.

⁷⁹ I A A., section 107.

⁸⁰ I A (S of S) Act, section 7 (2).

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the trial is held in India) to the officer commanding the division or brigade, in which the trial was held¹¹ who, if he considers that justice has been done, should record or cause to be recorded by his staff officer acting on his behalf in the proceedings a minute to show that he has seen them and also if a direction under section 3 (1) of the Indian Army (Suspension of Sentences) Act has been passed issue his orders thereon, or if not himself a superior military authority, forward the proceedings to such an authority for orders. This officer can, for reasons based on the merits of the case, set aside the proceedings or reduce a legal but excessive sentence to any other which the court might have passed. If the sentence is illegal he may either decide to treat it as a nullity, or may transmit the proceedings of a court which has passed such a sentence to one of the higher¹² such an authority referred to in section 103 of the Act who for the illegal (and therefore can. of co. 103 at once. If he decides to treat an illegal sentence as a nullity, he should direct it to be struck out from the proceedings and the accused to be relieved from all consequences of the sentence, though not of the conviction.

(ii) General and District Courts-martial

Application for
general court-
martial or dis-
trict court-
martial.

8. When a commanding officer remands a person subject to Indian military law for trial by general or district court-martial he should at once submit an application for such a court to superior authority, accompanied by the summary of evidence and the charges on which it is proposed to bring the accused to trial, as well as by certain other documents specified on the form provided for such applications.

Duty of con-
vening officer.

9. An officer receiving an application to convene a general or district court-martial must consider the nature of the case, the statutory provisions, and the regulations (if any) applicable to it, and, subject thereto, must use his discretion as to the mode of disposing of the application. He must satisfy himself that the charge is for an offence under the Indian Army Act, and properly framed in accordance with the rules, and that the evidence justifies the trial of the accused.¹³ If he thinks it does not, he should order the accused to be released; if he doubts, he can order the release or refer the case to superior authority. If he thinks it should be disposed of summarily or by summary court-martial, he should give directions to that effect. If he thinks it should be tried by a general or district court-martial, he will either convene such a court or apply for such a court to be convened.

Considerations
to be borne in
mind by con-
vening officer.

10. In forming his decision the convening officer will give due weight to the prevalence of the particular crime charged, in his command, the different cir- one time to try an offence by a summary or district court-martial, and at another time to take a more serious view of it. A case should not as a rule, be sent for trial unless there is reasonable

¹¹ I. A. A., section 127 and Rule 119.
¹² Rule 27.

probability that the accused person will be convicted; at the same time there may be cases where disgraceful charges have been preferred and where a court-martial affords the only means to the accused of decisively clearing his character. In any event, members of courts-martial should not allow the fact of a case being sent for trial, or the fact of a particular description of court-martial having been selected, in any degree to influence their estimate of the evidence. When a person is to be arraigned on a serious charge, charges for any minor offence may be dropped if the convening officer thinks proper.

11. The convening officer directs the trial of the accused person, on the charges as finally selected by him, by means of an order inscribed on the charge-sheet and in addition issues his "convening orders."¹⁴ In this the members and officials of the court are appointed or detailed as well as such waiting members as may be thought necessary. The members and waiting members may, at the discretion of the convening officer, be either all British officers or all Indian officers, unless the accused has claimed trial by British officers when the court must be so constituted. They cannot be partly British and partly Indian officers.¹⁵ The president is not appointed by name (as is done in the case of Army Act courts) the senior member presiding as a matter of course.¹⁶ On the receipt of orders for his trial, the accused is warned for trial.¹⁷ He should have proper opportunity to prepare his defence and liberty to communicate with his witnesses and legal adviser, or other friend. This liberty is subject to the limitation that they are reasonably available as the object of the rule is to give the accused full opportunity to prepare his defence, but not to enable him to postpone his trial.

Convening
order.

12. The court having assembled at the time and place named in the "convening order" the members take the oath according to their rank.¹⁸ The convening officer (if either has been appointed) first duty of the court is to read the "convening order." If this order appears on the face of it to be proper, the court will have complied with Rule 31 requiring them to ascertain that the court has been convened in accordance with the Indian Army Act and Rules.

Assembly of
Court.

13. The court will then¹⁹ proceed to ascertain that the proper number of officers is present, and that each of those officers is capable of serving, that is to say, is eligible and not disqualified to serve on the court-martial, and is of the rank required by the order convening the court. The eligibility of an officer depends on his status as an officer, that is, on his being an "officer" as defined in section 7 (5) of the Act. Disqualification is a personal question, and depends on his being, or having been, in any manner a party to the case. The corps to which officers belong, and their rank, are matters merely for the convening officer, except that the court should ascertain that the provisions of Rule 30 are observed. If any officer appears not capable of serving he will retire, and one

Eligibility and
freedom from
disqualification
of members to
be ascertained.

¹⁴ For form, see Appendix III to Rules, Form No. 1.

¹⁵ I. A. A., section 10.

¹⁶ I. A. A., section 77.

¹⁷ Rule 23.

¹⁸ Rule 31.

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of the officers in waiting will be directed to serve in his stead, and his capacity for serving must be considered in the same manner. It will usually be convenient, where there are officers in waiting, to consider their capacity to serve before proceeding further.

Amenability of
accused to
jurisdiction.

14. The court having ascertained the validity of their constitution, will then consider whether the accused to be tried is amenable to their jurisdiction and whether the charge is properly framed; if not satisfied the court should adjourn and report to the convening authority."

Appearance of
prosecutor and
accused.

15. On the conclusion of these preliminary proceedings the prosecutor will take his place and the accused be brought before the court. The accused, if an officer, will be in the custody of an officer, if a non-commissioned officer, in the custody of a non-commissioned officer, and if a private or follower, in the custody of an escort. If necessary, an escort may be employed in any case. The accused is allowed a seat as a matter of course in the case of an officer, and in any other case when the court think proper. Accommodation is to be afforded, on the application of the accused, for his friend or counsel

Objections by
accused.

16. Any objection by the accused to the members of the court will first be disposed of in accordance with section 80 of the Indian Army Act and Rule 34. The members and officials of the court will then be sworn or affirmed" and the accused arraigned and required to plead to the charges. If the charges are contained in more than one charge-sheet the arraignment, as well as the prosecution, defence and finding, in the case of each charge-sheet must be kept separate "

Pleas, etc.

17. The various pleas and objections which are open to the accused, will be in the Rules. They correspond to the provisions at trials under the Army Act.

Plea of
"guilty."

18. If the accused pleads guilty to any charge the procedure will be the same as has been already described when discussing that of summary courts-martial under similar circumstances, except that the accused may address the court twice,—the addresses in reference to the charge and in mitigation of punishment being separate.

Plea of "not
guilty" and
duty of prose-
cutor.

19. On a plea of not guilty, the prosecutor will, if the case is complicated, make an opening address, giving an outline of the evidence he intends to call, but abstaining from any argument and comments not required to explain the nature of the case. The duty of the prosecutor is fully laid down and explained in Rules 46 and 66 and the notes thereto; and it is only necessary here to observe generally that the prosecutor is an officer of justice, whose first duty is to ascertain the truth—not to obtain a conviction independently of the truth; and that he is bound to act with scrupulous candour and fairness towards the accused and the court, and to conduct the case throughout in a fair and moderate spirit. Any deviation from the above line of conduct will be at once checked by the court. On the

" Rule 32.

" For forms, see Rules 35 and 36

" Rule 63

" Rules 32 to 43

conclusion of his address, the prosecutor will call the evidence for the prosecution. The accused is at liberty to cross-examine the witnesses, and the prosecutor may then re-examine them on matters raised by the cross-examination.

20. At the close of the case for the prosecution the accused will be called on for his defence. The course of procedure on the defence differs according to whether the accused does or does not call witnesses to the facts of the case.²² When he calls no such witnesses, the prosecutor may first sum up his evidence, and the accused may then make an address in defence and call his witnesses (if any) as to character; the judge-advocate (if any) will then sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding.²³ Defence when no witnesses to facts of case called by accused.

21. If, on the other hand, the accused calls witnesses to the facts of the case, he may make an opening address; he will then call his witnesses who may be cross-examined by the prosecutor and re-examined by the accused. The accused may then sum up his case in a second address, and the prosecutor may reply. After the reply of the prosecutor, the judge-advocate (if any) will sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding.²⁴ In exceptional cases witnesses in reply may be called for the prosecution before the second address of the accused. Defence when accused calls witnesses to facts of case.

22. The accused is to be allowed great latitude in making his defence, and will not, within reasonable limits, be stopped by the court merely for making irrelevant observations. The court must never forget that an accused person is presumed to be innocent until proved to be guilty.²⁵ Latitude allowed to defence.

and any doubt as to the sufficiency of proof must be decided in the accused person's favour.

23. The court, in considering their decision, should not allow themselves to be influenced by the consideration of any supposed intention of the convening officer in sending the case for trial. It may be very right to send for trial a person who, when tried, ought to be acquitted, and therefore an acquittal is not in itself a reflection on the convening officer. Even if it were, this should not lead a court to convict, unless the evidence establishes the charge to their satisfaction. Court not to be influenced by supposed intention of convening officer.

24. Every finding of a general or district court-martial under Indian military law requires confirmation²⁶ and remains secret till confirmed, and this applies to acquittals equally with convictions. In this respect Indian military law differs from the Army Act where an acquittal does not require confirmation and is announced at once. Confirmation required.

25. If the finding on any charge is guilty the court is reopened and evidence as to character and particulars of service Procedure after conviction.

²² All witnesses, except as to character, are witnesses to the facts of the case.

²³ Rule 47.

²⁴ Rule 48.

²⁵ I. A. A., section 54.

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recorded. The accused may address the court on this evidence and the court then closes to consider their sentence. Only one appeal is allowed on however many charges the accused may be found guilty of. The sentence is allowed by the court in the proceedings the same as in the court of appeal or superintending.

Revision.

26. The confirming officer can send the proceedings of a court-martial back once for revision. This

court and the accused released. Further differences from Army Act procedure on revision are that additional evidence can, if the confirming officer so orders, be taken, and that a sentence can be increased on revision.

Mitigation, etc. of sentence.

27. The confirming officer can when confirming the sentence, whether after revision or without it, mitigate, remit, or commute the punishment. If he is himself a superior military authority under the Indian Army (Suspension of Sentences) Act and the sentence is capable of suspension he can suspend it and if not such an authority he can direct that the offender be not committed until the orders of a superior military authority have been obtained.¹⁰⁰ After confirmation, however, only the higher authorities referred to in sections 103 and 112 can interfere with a sentence, though a superior military authority can suspend or remit it at any time.¹⁰¹

(iii) Summary General Courts-martial.

Constitution and powers of summary general courts-martial.

28. In addition to those which we have already considered, another court exists in the Indian army. It is of an exceptional character, is called a summary general court-martial, and corresponds roughly to the field general court-martial of the Army Act. It consists of three officers, who may be British or Indian or partly British and partly Indian, and has the same powers as a general court-martial. If it passes a sentence not exceeding that awardable by a district court-martial its proceedings except in the case of an Indian officer require no confirmation, unless specially ordered, and the sentence is carried out at once.¹⁰² In other cases the finding and sentence must be confirmed by the convening officer or if the convening officer so directs by an authority superior to him.

Summary general courts-martial in time of peace.

29. A court of this character is obviously only suited to active service conditions, and the power of ordering the assembly of such courts in time of peace is therefore restricted to officers empowered by the Governor General in Council or the Commander-in-Chief. It might sometimes be necessary to

¹⁰⁰ I A. A., Chapter VI.¹⁰¹ I A. A., section 100.¹⁰² I A. A., section 55.¹⁰³ I A. (Suspension of Sentences) Act, section 3 (1).¹⁰⁴ I A. (Suspension of Sentences) Act, section 5.¹⁰⁵ Rule 133.

resort to them for the trial of an offender at a remote station where enough officers to constitute a general court-martial were not available. In such cases, however, directions should be given that the evidence and the statement of the accused in his defence shall be recorded in full, instead of in the abbreviated form allowed by Rule 146, the proceedings being thus assimilated, so far as circumstances permit, to those of an ordinary general court-martial.

30. On active service these courts can be assembled by,—

- (1) The officer commanding the forces in the field
- (2) An officer empowered by him in this behalf
- (3) An officer commanding any detached portion of His Majesty's troops.¹²³

Summary general courts-martial on active service.

The last mentioned officer, No (3), can however only do so when, in his opinion, the exigencies of the service prevent the offence being tried by an ordinary general court-martial. When therefore such an officer assembles a summary general court-martial he must be careful to record such an opinion in the convening order.

31. A simple form for the convening of these courts and the record of their proceedings has been provided and will be found in the third appendix to the Rules. The record made of the evidence and of the statement of the accused in his defence must be attached. Members are sworn or affirmed as at ordinary courts-martial and the evidence is taken on oath or affirmation in the presence of the accused, who can cross-examine the witnesses for the prosecution address the court and call witnesses. If the proceedings do not require confirmation, the finding and sentence are announced in open court unless the off. military sentences) Act.¹²⁴ If they require confirmation the proceedings are at once transmitted for confirmation and the sentence (if any) carried out as soon as possible after it has been received, unless the sentence has been suspended. In both cases, however, if the sentences are not suspended, the offender must, if sentenced to transportation or imprisonment for three months or more, be also committed in respect of the unexpired balance of any former suspended sentence.¹²⁵ The remarks in para 26 above, as to the revision of general and district courts-martial apply also to those summary general courts-martial the proceedings of which require confirmation.¹²⁶ Those which require no confirmation cannot be revised.

Proceedings of summary general courts-martial.

(iv) Suspension of Sentences

32. When a sentence of imprisonment or transportation has been passed by a court-martial under the Indian Army Act the question whether the offender should be committed to undergo

The Indian Army (Suspension of Sentences) Act, 1920.

¹²³ I. A. A., section 62.

¹²⁴ Rule 145.

¹²⁵ I. A. (Suspension of Sentences) Act, section 3 (1).

¹²⁶ I. A. (Suspension of Sentences) Act, section 7 (2).

¹²⁷ I. A. A., section 100.

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his sentence or whether he should be kept in arrest pending the orders of a superior military authority as to his commitment or release under suspended sentence must be considered (1) by the confirming officer, when confirming, if the sentence requires confirmation or (2) by the president or officer holding the trial, if the sentence does not require confirmation. If it is considered that the offender should not be committed pending the orders of a superior military authority the appropriate officer must so direct when confirming or passing sentence.¹⁰⁹ A superior military authority, i.e., the Commander-in-Chief in India or any officer empowered under the Indian Army Act to convene general or summary general courts-martial will then order either that the sentence be suspended in which case the offender is released, without prejudice to his subsequent commitment, or that the offender be committed.¹¹⁰ In either case the sentence commences to run on the date it was signed and runs continuously even though suspended until it normally expires. Suspension does not affect the continuity.¹¹¹

It may be that the confirming officer is also a superior military authority, if so, he may pass orders as a superior military authority forthwith, dispensing with the direction referred to above.

A superior military authority may suspend a sentence at any time,¹¹² notwithstanding it has been put into execution; it is not necessary that the sentence be referred to him by the confirming officer, the president or the officer.¹¹³

(Suspension of Sentences) Act. He can also order a suspended sentence into execution at any time¹¹⁴ provided as above.

When a sentence is under suspension it is the duty of certain authorities designated "competent military authorities"¹¹⁵ to review them periodically at intervals of not more than four months.¹¹⁶ They may in their discretion at their reviews either keep a suspended sentence further suspended by ordering it to be brought forward for reconsideration on such and such a date not more than four months ahead or refer it to a superior military authority with a recommendation either that the offender be committed to undergo the unexpired portion of the sentence or that the sentence be remitted.

The effect of a person being tried again whilst under a suspended sentence and being sentenced to imprisonment or transportation is noted to section 7 of the (Suspension of Sentences) Act and the action further sentence is (1) transportation or imprisonment for three months or more or (2) imprisonment for less than three months. For the effect of sus

¹⁰⁹ I A (Suspension of Sentences) Act, section 3 (1).

¹¹⁰ I A (Suspension of Sentences) Act, section 3 (2).

¹¹¹ I A (Suspension of Sentences) Act, section 4.

¹¹² I A (Suspension of Sentences) Act, section 3 (2) (b).

¹¹³ I A (Suspension of Sentences) Act, section 5 (a).

¹¹⁴ I A (Suspension of Sentences) Act, section 2 (b).

¹¹⁵ I A (Suspension of Sentences) Act, section 6.

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statements made by witnesses under examination, or of documents produced for inspection, and is therefore commonly classified as being either oral evidence or documentary evidence. But the members of the court may supplement by direct information the knowledge derived from these sources. Thus they may inspect for themselves anything sufficiently identified by evidence and produced in court as material to their decision, or they may go to view any place the sight of which may help them to understand the evidence.¹²¹

Difference between judicial and non-judicial inquiries.

4. There is no difference in principles between the method of inquiry in judicial and in extra-judicial proceedings. In either case a person who wishes to find out whether a particular event did or did not happen tries, in the first place, to obtain information from persons who were present and saw what happened (*direct evidence*), and, failing that, to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen (*indirect evidence*). But in judicial inquiries the information given must be on oath or affirmation, and be liable to be tested by cross-examination, and the Indian Evidence Act, by allowing¹²² evidence to be given only regarding facts which are "in issue" or "relevant" excludes particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration. Statements so excluded are said to be "not admissible as evidence."

Reasons for excluding certain classes of evidence.

5. The answer to the question why particular statements should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following:—

- (1) It assists the court.
- (2) It secures fair play to the accused.
- (3) It protects absent persons.
- (4) It prevents waste of time.

It assists the court by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused, because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all subjects with which that fact is more or less connected.

"Proved."

6. The definitions of "proved," "disproved" and "not proved" in section 3 of the Indian Evidence Act should be particularly noticed. These are:—

"A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or con-

¹²¹ Rules 70, 114 and 143 (A)

¹²² Indian Evidence Act, section 5

siders its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

"A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist." "Disproved."

"A fact is said not to be proved when it is neither proved nor disproved." "Not proved."

7. Members of courts-martial under the Indian Army Act should bear these definitions carefully in mind when deliberating upon their finding, and they are fortunate in having so clear a guide in the performance of a most difficult duty. These definitions to be borne in mind.

(ii) What must be proved.

8. What must be proved, in order to obtain a conviction, is the particular charge brought. As a general rule, every charge alleges, or ought to allege, a specific offence constituting a breach of a specific enactment, and, subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared. And the exceptions¹ will be found not to conflict with this reason, since they relate either to cases where the distinction between two offences is mainly technical; or to cases where the distinction is one of degree, but not of kind, and the accused, having been charged with the more serious, is allowed to be convicted of the less serious offence. Charge must be proved.

9. It is the substance only of the charge that need be proved. Allegations which are not essential to constitute the offence, and which may be omitted without affecting the validity of the charge, do not require proof, and may be rejected as surplusage. In some cases, as in a charge against a sentry for sleeping on his post, or in a charge for not giving immediate notice of desertion, the time or place of the offence is material; but, as a rule, it is not so. Where the court think that the facts proved differ materially from the facts alleged, but prove the same charge, they are empowered by Rule 51 (B) or 107 (B), as the case may be, to record a special finding, instead of a finding of "Not guilty." But its substance only need be proved.

(iii) Arrangement of the Indian Evidence Act.

10. The law of evidence shows how a court may lawfully be convinced that the facts alleged in the charge happened, or that their happening was so probable that it may be regarded as proved. The Indian Evidence Act deals with this subject thus— Arrangement of the Act.

- (1) Part I and certain portions of Part III show what sort of facts may be proved in order to produce this conviction in the minds of the court.

¹ I. A. A., section 86, Criminal Procedure Code, sections 237, 238.

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(2) Part II deals with the proof of facts, that is, what sort of proof is to be given of those facts.

(3) The greater portion of Part III deals with the production of that proof, that is, who is to give it, and how it is to be given.

Unlike the corresponding provisions of English law, which assume that we know what is, speaking generally, admissible as evidence and merely lay down certain exclusive or negative rules as to what shall not be admitted, the Indian Evidence Act states definitely that evidence may be given of "facts in issue" and of such other facts as are declared by it to be "relevant," but of no others. The test therefore as to the admissibility of any piece of evidence is,—does it state a fact in issue or a relevant fact (as defined)? If it does, it is admissible; if not, it is inadmissible. A definite rule such as this is clearly more suited to Indian conditions than the English system would have been, while the list of "relevant" facts has been so framed as to arrive at practically the same results as in English law.

"Facts in issue."

11. The facts which are "in issue" in a criminal trial are those on which, either by themselves or in connection with other facts, the existence, non-existence, nature or extent of the accused person's liability to punishment depends.¹²¹ For instance, A is accused of the murder of B. At his trial the following facts may be in issue—

That A caused B's death.

That A intended to cause B's death,

That A had received grave and sudden provocation from B.

That A, at the time of doing the act which caused B's death, was by reason of unsoundness of mind, incapable of knowing its nature.

(iv) *Relevant facts.*

What evidence is admissible.

12. We have now to consider what facts are "relevant." The Indian Evidence Act answers this question by enumerating these in the sections which go to make up Chapter II "of the relevancy of facts." If a fact is "relevant," it is of "relevant facts" it is in issue, or its admission is in the Act, or by some other provision of law.¹²²

Circumstantial evidence.

13. Facts which are "relevant" or which are otherwise specially "circumstantial," "they are ordinary crimes are ordinary," "the evidence of witnesses who directly saw the main 'fact in issue' happen can rarely be obtained, and that in the great majority of cases

¹²¹ Indian Evidence Act, section 3.

¹²² Sections 143, 146, 148, 153, 155, 156, 157 and 158.

¹²³ *See* the special provisions as to evidence contained in the I. A. A.

¹²⁴ *See* paras. 14 to 63 below.

¹²⁵ *See* para. 64 below.

reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it; for it has become a proverb that "facts cannot lie," whilst witnesses may. On the other hand, it must always be borne in mind that if facts cannot "lie," they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is not that which ought to be placed upon them. Therefore, before the court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion than that the accused was the guilty person.¹²⁹

14. The kinds of "relevant" evidence most likely to be met with in court-martial practice will be considered in the following paragraphs. Relevant facts.

15. Facts which form part of the same transaction as a fact in issue are relevant.¹³⁰ Facts forming part of one transaction.

For example, *A* is accused of the murder of *B* by beating him. Whatever was said or done by *A* or *B* or the bystanders at the beating, or so shortly before or after it as to form part of the same transaction, is a relevant fact. So also on a charge of theft, though it is not material in general to inquire into any other taking of goods besides that specified in the charge, yet for the purpose of ascertaining the identity of the person, it is often important to show that other goods which had been upon an adjoining part of the same house and grounds, were taken in the same night, and afterwards found in the possession of the accused. This is strong evidence of the accused having been near the owner's house on the night of the theft; and from that point of view it is material. Such evidence the section now under consideration makes relevant. Again, *A* is accused of waging war against the King, by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though *A* may not have been present at all of them.

16. Facts which are the occasion, cause, or effect of a fact in issue or relevant fact or which afforded an opportunity for its occurrence are relevant.¹³¹ Facts which are occasion, cause, etc., of a relevant fact.

For example, on the trial of *A* for robbing *B*, the facts that shortly before the robbery *B* had money in his possession and showed it publicly to third persons are relevant. Under this rule also, evidence may be given of bruises which a medical officer or other person sees next day on the body of the non-commissioned officer whom a soldier is accused of striking.

17. Facts which show or constitute a motive or preparation for a fact in issue or relevant fact are themselves relevant; as is also the conduct of accused persons and those against Facts showing motive or preparation.

¹²⁹ For an example of the difference between good and bad circumstantial evidence, see *M. M. L.*, Chapter VI, para. 43.

¹³⁰ Indian Evidence Act, section 6.

¹³¹ Indian Evidence Act, section 7.

¹³² Indian Evidence Act, section 8.

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whom offences are committed, if such conduct is influenced by a fact in issue or relevant fact.

Thus, evidence may be given that, after the commission of the alleged crime, the accused absconded, or was in possession of the property, or the proceeds of property, acquired by the crime, or that he attempted to conceal things which were or might have been used in committing the crime, or as to the manner in which he conducted himself when statements were made in his presence and hearing. This rule also allows evidence of a complaint made shortly after the alleged crime was committed, and of the terms in which such complaint was made, to be given in any case in which an offence against the complainant is the subject of proceedings. The English law only allows such evidence in cases of rape and similar offences against women and girls, but the Indian law is wide enough to cover other crimes, *e.g.*, robbery, causing hurt, etc.

Complaints

Distinction
between a
statement and
a complaint.

18. "A distinction is to be marked however between a bare statement of the fact of rape or robbery, and a complaint. The latter evidences conduct; the former has no such tendency. There may be sometimes a difficulty in discriminating between a statement and a complaint. It is conceived that the essential difference between the two is that the latter is made with a view to redress or punishment and must be made to some one in authority—the police, for instance, or a parent, or some other person to whom the complainant was justly entitled to look for assistance and protection. The distinction is of importance; because while a complaint is always relevant, a statement is relevant under a dying declaration."¹²²

Explanatory
and introductory
facts.

19. Facts necessary to explain or introduce a fact in issue or relevant fact are relevant, as well as those which support or rebut an inference suggested by a fact in issue or relevant fact, establish the identity of a person or thing whose identity is relevant, fix the time or place at which any fact in issue or relevant fact happened, or show the relation of the parties."¹²³ The facts here referred to are only relevant in so far as they are necessary for the purposes indicated.

Acts of
conspirators.

20. In cases of conspiracy, after *prima facie* evidence has been given of the existence of the plot, and of the connection of the accused therewith, anything said, done or written by one conspirator in reference to their common intention is a relevant fact as against each and all of the conspirators."¹²⁴

Thus, on the consideration of a charge of mutiny, or exciting mutiny, evidence of this kind may, after such *prima facie* proof, be received against a particular prisoner. The Indian law is wider in this respect than that of England. Under

had ceased. The Indian law admits against a conspirator everything said, done or written by a co-conspirator in refer-

¹²² Norton Evidence, 114

¹²³ Indian Evidence Act, section 9.

¹²⁴ Indian Evidence Act, section 10.

ence to the common intention, even if said, done or written after the conspirator against whom it is offered had ceased to be connected with the conspiracy or before he joined it. The English law would reject such evidence as hearsay (in the case of things written or said) and as irrelevant in the case of things done.

21. Facts which are inconsistent with, or which render highly probable or improbable, a fact in issue or relevant fact are themselves relevant.¹²² Inconsistent facts.

This rule is of importance to the party whose object is to disprove something which is asserted by the opposite side. An "alibi" is a familiar instance of this. If A is accused of a crime committed at Lahore and he can show that he was at Calcutta on the same day, his innocence is clear, while if he can even show that shortly before and after the time when the crime was committed he was so far from Lahore that it was most improbable he could get there and back, a strong point in his favour will have been established. "Alibi"

22. Facts showing the existence of any relevant state of mind or body are relevant.¹²³ Facts showing state of mind or body.

Thus, where any state of mind (e.g., intention, knowledge, the absence of good faith, negligence, rashness, or ill-will) is an ingredient of an offence, the commission of the principal act being either admitted or proved, evidence may, for the purpose of proving the existence of such a state of mind in reference to the particular matter in question, be given of similar acts committed by the accused on different occasions. Thus, although on a charge of murder, evidence as to the accused person's disposition is inadmissible, yet former attempts by him to assassinate the deceased are admissible as a proof of intention. So also, evidence is admissible as to former menaces or expressions of vindictive feeling towards the deceased. Again, on a charge of uttering base coin, proof that the accused uttered base coin on other occasions is admissible as evidence that he knew the coin to be base.

23. In support of a charge for malicious, disrespectful, or unbecoming language, addressed by word of mouth, or written to, or used of, a superior officer at a stated time, or in a particular letter, after having proved the words in the charge, the prosecutor, to show the spirit and intention of the accused, may prove also that he spoke or wrote other disrespectful or malicious words on the same subject, either before or afterwards, or that he published or disseminated copies of the letter set forth as disrespectful in the charge. This evidence is admissible, not in aggravation of the crime charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge; and the accused may give in evidence, as negating a deliberate purpose, or as palliating, though not justifying his conduct, that he had been provoked to act as he had by the conduct of his superior towards him. Further illustrations.

24. Facts which show whether an act was intentional or accidental by indicating the existence of a series of acts of which it formed part are relevant.¹²⁴ Facts showing intention.

¹²² Indian Evidence Act, section 11.

¹²³ Indian Evidence Act, section 14.

¹²⁴ Indian Evidence Act, section 15.

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This is really a special case of the principle just discussed. Thus on a charge for murder by shooting, if it is questionable whether the shooting was by accident or design, proof may be given that at another time the accused intentionally shot at the same person. Similarly when a warrant officer was tried for fraudulently issuing passage warrants to certain persons who were not entitled to them, after it was proved that the accused had issued the actual warrants complained of, evidence of a series of similar transactions extending over many years was admitted as negativing the theory of the defence that the issue of these warrants might have been a mere mistake on the part of the accused.

Relevance of facts.

25. Facts which show a course of business according to which a fact in issue or relevant fact would naturally have been done, are relevant.¹³ For example, the question is whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office are relevant.

(c) Admissions and Confessions

Admission and confession.

26. Admissions are statements made by a party to the proceedings, or his representative, as to the subject-matter of the case, or the facts relevant thereto.¹⁴ The general rule is that they may be proved against those who made them but not in their favour.¹⁵ In connection with crime admissions usually occur in the form of confessions. "A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference, that he committed that crime."¹⁶ The value of a confession if true, is obviously very great, but special provision as to their receipt has been made in the Indian Evidence Act, in order to guard against torture or duress for the purpose of extorting them. Confessions are therefore only relevant subject to certain conditions. These conditions will now be considered.

Confession not admissible against person who made it.

27. The general rule is, that a confession is not admissible as evidence against any person except the person who makes it.¹⁷ But a confession made by one accomplice in the presence of another is admissible against the latter to this extent, that, if it incriminates him, his silence under the charge may be used against him, while on the other hand his prompt repudiation of the charge might tell in his favour.¹⁸ The Indian law, differing in this respect from the English, further enacts that where two or more persons are tried jointly for the same offence, a confession made by one of such persons, affecting himself and any other of the accomplices jointly tried with him, when verified, may be taken into consideration by the court against that other accomplice as well as against the person who made

¹³ Indian Evidence Act, section 11.

¹⁴ Indian Evidence Act, section 11.

¹⁵ Indian Evidence Act, section 11.

¹⁶ Section 17, Act II.

¹⁷ Indian Evidence Act, section 1.

it."¹⁴⁴ The confession may have been made at any time and not necessarily in the presence of the accused; but the confessing person must implicate himself substantially to the same extent as the accomplice against whom the confession is taken into consideration. Though the confession of an accomplice may thus, under certain circumstances, be "taken into consideration" and thus be an element in the consideration of the case against the other co-accused, it must necessarily be of less weight than sworn evidence, less even than the sworn evidence of an accomplice who is not jointly tried. The courts have accordingly established the following rules with regard to this species of evidence.—

- (1) Where there is absolutely no other evidence, such a confession alone will not justify the conviction of a person who is being tried jointly with its author.
- (2) The confessions of co-accused must be corroborated by independent evidence, both in respect of the identity of all the persons affected by it and of the fact that the crime was committed

28. To be relevant, and therefore admissible as evidence, a confession must be voluntary.¹⁴⁵ Under the English law the onus lies upon the prosecution to prove that a confession is voluntary before it can be used in evidence. Under the Indian law, though it is highly desirable that the prosecutor should prove the circumstances under which a confession was made, the onus lies upon the accused of showing that a confession made by him was not voluntary and therefore irrelevant. Unless therefore, it appears doubtful whether a confession is voluntary, a court need not require the prosecutor to affirmatively establish that fact.

29. A confession is not deemed to be voluntary, if it appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority (e.g., the prosecutor or a person having the custody of the accused) and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him to be reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature *in reference to the proceedings against him*.¹⁴⁶ Thus, if a hand-bill issued by the Government promising a reward and pardon to any accomplice in a certain crime who would confess were brought to the knowledge of an accomplice in the crime, who, under the influence of a hope of pardon confessed, that confession would not be voluntary and could not be used at his trial.

30. But a confession is not involuntary merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceedings, or by inducements held out by a person having nothing to do with the apprehension, prosecution, or examination of the accused. Thus a con-

¹⁴⁴ Indian Evidence Act, section 30. When one of several persons under joint trial pleads guilty, he no longer continues to be "tried jointly" with the others, and therefore any confession made by him cannot be taken into consideration against the others.

¹⁴⁵ Indian Evidence Act, section 24.

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fession made by a prisoner to a gaoler in consequence of a promise by the gaoler that if the prisoner confessed he should be allowed to see his wife, would be admissible in evidence. In short, to make a confession involuntary, the inducement must have reference to the accused person's escape from the criminal charge against him, and must be made by some person having power to relieve him, wholly or partially, from the consequences of that charge.

Confession
obtained by
fraud, etc.

31. It is, of course, improper to endeavour to extort a confession by fraud, or under the promise of secrecy, but if a confession is otherwise admissible as evidence, it does not become inadmissible merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, or because he was not warned that he was not bound to make the confession, and that evidence or it might be given against him.¹⁴⁶

Confession
voluntary if
made after
removal of
impression
produced
by inducement, etc.

32. A confession is deemed to be voluntary if, in the opinion of the court, it is shown to have been made after the complete removal of the impression produced by any inducement, threat, or promise which would otherwise render it involuntary.¹⁴⁷ Thus, A is accused of a military crime, B, an officer, tries to induce A to confess by promising to get the commanding officer to dismiss the case with an admonition if he does so. The commanding officer informs B that he cannot give any such undertaking. This is communicated to A. After this A makes a statement. This is a voluntary confession.

Confessions to
police officers

33. Two provisions which are peculiar to Indian law may be mentioned here.

- (1) No confession made to a police officer can be proved against a person accused of an offence.¹⁴⁸
- (2) No confession made by any person whilst in the custody of a police officer, unless it be made in the immediate presence of a magistrate, can be proved as against such person.¹⁴⁹

In both these cases however facts discovered in consequence of a confession which is itself inadmissible under (1) or (2) above, and so much of the confession as distinctly relates to the facts thereby discovered, may be proved.¹⁵⁰ Thus A accused of house-breaking by night makes a confession to a policeman. Part of it is that A had thrown a lantern into a certain pond; the fact that he said so, and that the lantern was found in the pond in consequence, may be proved.

¹⁴⁶ Indian Evidence Act, section 28.

¹⁴⁷ Indian Evidence Act, section 28.

¹⁴⁸ Indian Evidence Act, section 25.

¹⁴⁹ Indian Evidence Act, section 26. The term police officer in sections 25 and 26 should be construed according to its more comprehensive and popular meaning; it includes any sort of police officer, from a Deputy Commissioner of Police down to a village chowkidar. It has been held to include a member of the garrison or military police but this is doubtful.

¹⁵⁰ Indian Evidence Act, section 27.

Ch. V. already discussed, the most important of the statements thus made evidence are:—

- (1) Statements by persons since dead as to the cause of their death;¹⁵⁶
- (2) Statements or entries made in the ordinary course of business;¹⁵⁷
- (3) Statements which are against the interests of their authors, or which would have exposed them to a criminal prosecution or a suit for damages.¹⁵⁸

Comparison
with English
law.

39. The law of India as to all these differs in a greater or less degree from that of England. As to (1) the English rule is that a dying declaration is only admissible in trials for the murder or manslaughter of the declarant, and only if it is proved that he was at the time in actual danger of death and had given up all hope of recovery. Under Indian law, however, the statement of a person who has since died is admissible in any proceeding in which the cause of his death comes into question, and there are no conditions as to the declarant being in danger of death or having abandoned all hope of recovery. These considerations do not therefore affect the *admissibility* of such evidence, though they may materially affect the weight which should be attached to it.

Comparison
with English
law.

40. The statements, etc., referred to in (2) and (3) are, under English law, only admissible when their author is dead. The Indian Evidence Act, however, allows of such statements being given in evidence when he cannot be found or has become incapable of giving evidence, or when his attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court to be unreasonable.

Disto.

41. If such a statement or entry as is referred to in (2) was made in the ordinary course of business no question as to the source of the information or the time when the entry or statement was made will affect its admissibility. Under English law such statements or entries are only admissible if made in the ordinary course of business, in *performance of a duty* and *contemporaneously* with the act to which they relate; further they can only *prove facts which it was the duty of the declarant to include in the statement or entry and of which he had personal knowledge*. The Indian law is different in these respects; so long as the statements or entries are made in the ordinary course of business, it need not have been the declarant's duty to make them, they need not have been made *contemporaneously*, it is not necessary that the declarant should have had *personal knowledge* of the transaction recorded, and they may be used to *prove independent collateral matters*, i.e., matters which it was not necessary to include in the ordinary course of business.

Evidence as
previous
country was
admitted.

42. It may sometimes happen that a material witness, who has given evidence at a preliminary inquiry, cannot attend at the trial. If the evidence was given in a judicial proceeding before a person authorized by law to take it and was taken on

¹⁵⁶ Indian Evidence Act, section 32 (1).

¹⁵⁷ Indian Evidence Act, section 32 (2).

¹⁵⁸ Indian Evidence Act, section 32 (3).

oath or affirmation, with liberty to the accused to cross-examine (as for instance, the inquiry before a committing magistrate), the Indian Evidence Act¹³⁹ allows it to be used at the subsequent trial of the accused on the same charge, if the witness,—

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- (1) is dead,
- (2) cannot be found,
- (3) is incapable of giving evidence,
- (4) is kept out of the way by the accused, or
- (5) if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable.

43. This provision will sometimes admit of the evidence which was given at a court-martial which is dissolved before coming to a finding being used at the subsequent trial of the same accused before another court. It will also admit (subject to the above conditions) of evidence recorded before a magistrate in the presence of the accused and with liberty to cross-examine, in relation to the same charge as that on which he is afterwards tried by court-martial being used at such subsequent trial. This provision may be useful as a means of perpetuating testimony when the life of a witness is in danger, or he is under orders for active service and cannot be detained to give evidence.

Subject continued.

44. There is no provision making the summary of evidence taken before a commanding officer, when an accused person is remanded for trial by court-martial, evidence under the same circumstances as depositions taken on oath and in a judicial proceeding. Accordingly, the summary cannot be admitted as evidence of the facts recorded by it except where the prisoner has pleaded guilty.¹⁴⁰ But where a statement recorded in the summary of evidence is put in issue before a court-martial, as, for example, where a discrepancy is alleged between the statement made in the summary and the evidence given before a court-martial; or where the alleged wilful falsehood of such a statement becomes the occasion of a trial by a court-martial, the summary, if purporting to give the verbatim statement of the witness, may be given in evidence as confirmatory of the statement having been made.

Summary of evidence, how far admissible.

(vii) *Statements made under special circumstances.*¹⁴¹

45. The rule excluding hearsay evidence is applicable to written, or documentary, as well as to oral evidence. The statement of a person who is not called as a witness is none the less "hearsay" because it has been reduced to writing, and is offered in that form to the court. But in its application to documents of a public or official character, the rule is subject to very important qualifications. In the case of many such documents, the statements which they contain are, under express statutory provisions, admissible as evidence of the matters to which they relate.

Documents.

46. Thus by the Indian Evidence Act entries in books of account regularly kept in the course of business are relevant,

Entries in books of accounts.

¹³⁹ Indian Evidence Act, section 33.

¹⁴⁰ Rules 41, 102 and 146.

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55.

Proof of handwriting by comparison.

proved by comparison, under Act. It will, therefore, be ere, though it occurs in n writing admitted or proved compared with another which purports to be written by that person, in order that the genuineness of the latter may be established or rebutted. Nothing is said as to who is to make the comparison, and it may therefore be made either by the court or by an expert. A combination of both methods is the safer course. A comparison of handwriting is at all times as a mode of proof hazardous and inconclusive, and especially so when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts.¹⁷²

The same section goes on to provide that a court may require any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person. The comparison is, it will be noticed, made by the court in this case. It must be borne in mind that writing made for the purpose of comparison is not unlikely to be disguised.

Other methods of proof.

56. The methods referred to above are the usual ones by which an individual's authorship of a document are proved. They are not, however, the only ones, and in addition to the writer's own admission or the evidence of some one who saw him write it, the authorship of a document may be proved by circumstantial evidence.¹⁷³ For instance, A, whose credit is unimpeachable, is able to swear that B was the sole occupant of a room, and that, as soon as B left it, he (A) entered and found a letter, with the ink still wet, lying on the table. There could be no more convincing proof that B wrote the letter, however unlike his ordinary penmanship the writing might be. Again, the writing of an anonymous letter is the subject of a court-martial charge. Circumstances directing suspicion to a particular regiment, company, or class have come to light and specimens of the handwriting of all suspected persons have been procured from the regimental school or otherwise. One of these corresponds with the writing of the anonymous letter. Section 73 cannot be invoked as the anonymous letter does not purport to be by any one. The opinions of one or more experts as to the letter and the specimen being by the same writer and evidence as to the authorship of specimen are, however, relevant (Indian Evidence Act, sections 45 and 11) and from them the authorship of the anonymous letter may be inferred.

Summary of law as to proof of authorship of document.

57. The result of the foregoing remarks is that the authorship of a document may be proved by—

- (a) the evidence of experts (para. 51),
- (b) the evidence of persons acquainted with the handwriting of the alleged writer (para. 54),
- (c) comparison under Indian Evidence Act, section 73 (para. 55),

¹⁷² Per Jenkins, C. J., I. L. R., 37 Cal. 503.

¹⁷³ Per Cardozo, J., I. L. R., 37 Cal. 525.

- (d) the admission of the writer or the evidence of someone who saw him write it (para. 56), and
 (e) circumstantial evidence (para. 56).

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58. The rule which requires a witness to state what he knows, and not what he thinks, does not require him to depose to facts with an expression of certainty that excludes all doubt in his mind. For example, it is the constant practice to receive in evidence a witness's belief of the identity of a person or thing, or of the fact of a certain handwriting being the handwriting of a particular person, though he will not swear positively to those facts. It has been decided that a witness who falsely swears that he "thinks" or "believes," may be convicted of perjury equally with the man who swears positively to that which he knows to be untrue.

Evidence of belief not excluded.

59. In cases asserting the conduct of the accused, either as to department or language, it is not only proper, but often necessary, to require a witness to declare his opinion, because that opinion may be derived from the impression of a combination of circumstances, occurring at the time referred to, difficult, if not impossible, fully to impart to the court. But it would be manifestly improper to draw the attention of a witness to facts, whether derived from his own testimony or from that of another witness, and to ask his opinion as to their accordance with military discipline or usage, because the court, being in possession of facts, are the only proper judges of their tendency. If the witness is asked a question the tendency of which is to make him express his opinion as to the general conduct of the person accused or to give his judgment on the whole matter of the charge, he may, and should, decline to answer it.

Opinion as to conduct how far admissible.

(ix) Character, when relevant.

60. In criminal proceedings (in which term are included trials by court-martial) the fact that the accused is of good character is always relevant," but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character." "Character" by Indian law includes both reputation and disposition, but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown;" as an exception, however, to this, previous convictions can be proved as evidence of bad character, when such evidence is otherwise admissible, i.e., when evidence of good character has been given."

Evidence of character when admissible.

61. By a special provision" of the Indian Army Act, evidence of character (good or bad), previous convictions, and certain other prescribed matters, information on which is necessary to enable the court to decide upon their sentence, is admitted after the accused has been convicted, while at a summary court-martial the officer holding the trial may record such matters of his own knowledge. With these exceptions, no unfavourable

Evidence of character, etc., after conviction.

¹⁷⁴ Indian Evidence Act, section 53.

¹⁷⁵ Indian Evidence Act, section 54.

¹⁷⁶ Indian Evidence Act, section 55, explanation.

¹⁷⁷ Indian Evidence Act, section 54, explanation 2.

¹⁷⁸ I. A. A., section 53.

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Effect of evidence as to character.

evidence as to character is admissible unless the accused has brought it on himself by calling or eliciting evidence of his good character.

62. Evidence of general good character cannot avail the accused against the evidence of the fact, but where some reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence; and where intention is a principal ingredient in the offence, or where presumptive proof only is adduced, evidence as to character, bearing on the charge, may be highly important and serve to explain his conduct. On a charge of stealing, character for honesty may be entitled to great weight. So also on a charge implicating the courage of a soldier, character for bravery and resolution might be of vast importance. But it would be manifestly absurd on a charge of stealing, to allow character for bravery to weigh in the scale of proof: or on a charge of cowardice, to be biased by a character for honesty. General character, unconnected with the charge, though it may not weigh with the court, except in awarding punishment in discretionary cases, may essentially serve the accused by influencing the superior with whom it rests to mitigate or remit the sentence.

Evidence tending to show disposition not admissible.

63. Evidence that the person accused of an offence committed a like offence or acted in a similar manner on another occasion, is not admissible merely for the purpose of showing that he had a general disposition to commit such offences. Thus, of a charge of murder, the prosecutor cannot give evidence of the accused person's conduct in respect of other persons for the purpose of proving a blood-thirsty and murderous disposition. So, on a charge against a sentry of having been asleep on his post on a particular occasion, evidence that he had been found asleep on his post on other occasions would not be admissible for the purpose of showing that he would be likely to commit the offence, and on a charge of insubordination, evidence of insubordinate conduct on other occasions would not be admissible for the purpose of showing a tendency to insubordinate conduct. Evidence as to other crimes committed by the accused may however be admissible under paras 15, 22 or 24, above, if these crimes form part of the same transaction, show the existence of a relevant state of mind or body, or negative the theory of accident or misfortune.

Conclusion of list of "relevant facts"

64. This concludes the list of what the Indian Evidence Act classes as "relevant" facts. Special provision is however made elsewhere for the admission of certain other evidence, a consideration of which may be helpful to a court in arriving at a decision as to how far a witness is to be believed. These are—

- (1) Answers to certain questions which are admissible on cross-examination.
- (2) Evidence impeaching the credit of witnesses.
- (3) Corroboration of the statements of witnesses.

They will be considered later, when dealing with the portions of the Indian Evidence Act in which they occur.

(x) *Facts which need not be proved.*

Two categories of facts which need not be proved

65. Having thus settled what sort of facts may be proved, the Indian Evidence Act goes on to show how these facts are to be brought to the notice of the court which tries a case. In

the first place, certain facts need not be proved at all. These fall into two categories, viz., facts of which courts take judicial notice, and admissions.

66. A court is said to take judicial notice, in other words Judicial notice

to take judicial notice of all matters within the general military knowledge of its members. Thus, evidence need not be

further requires courts to take judicial notice of certain other matters. Among these are:—laws and rules having the force of law in force in British India, Acts of Parliament, the course of proceeding of Parliament and of the Indian legislatures, the accession and sign-manual of the King, the Great Seal and Privy Seal, the seals of all courts of British India and of certain British courts, the seal of any notary public, the existence, title and flag of recognised states, the divisions of time, the geographical divisions of the world, the territories of the Crown, the commencement, continuance, and termination of hostilities between the Crown and any other state or body of persons, and the "rule of the road"

67. In all those cases, and also on all matters of public history, literature, science or art the court may consult appropriate books of reference and may require the party asking it to take judicial notice of a fact to produce such a book, before it takes judicial notice of the fact. Books of reference may be consulted.

68. Facts which the parties admit in court need not be proved, otherwise than by such admissions, unless the court requires them to be so proved.¹¹⁹ It is the practice of courts-martial to receive admissions made in open court as to collateral or comparatively unimportant facts, not involving criminal intent, which are not in dispute, but must be proved on the part either of the prosecution or of the defence. Thus, it is the practice to allow either party the option of admitting the authenticity of orders or letters, or the signature of a document, or the truth of a copy, put in by the other party, in cases where such writings are receivable when proved; or that certain details in an enumeration of stores, or in an account, are correctly stated; or that a promise or permission to a certain effect, or a certain order, was actually given; or that a certain letter was sent or received on a given day; and so in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the court Facts admitted.

69. The commonest instance of an admission is a plea of guilty, which is an admission by the accused of all the averments in the charge-sheet. On such a plea no further evidence of the guilt of the accused is necessary and he can be convicted and sentenced accordingly. Plea of "Guilty."

¹¹⁹ Indian Evidence Act, section 57.

¹²⁰ Indian Evidence Act, section 52.

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(xi) Oral Evidence.

Oral evidence defined.

70. All other facts must be proved by oral or documentary evidence. Oral evidence means statements made to the court by witnesses, while documentary evidence means the production of documents for the inspection of the court¹¹¹. All facts, except the contents of documents, may be proved by oral evidence¹¹² which must in all cases be direct¹¹³; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it,

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner,

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds

Special rules as to treatises by experts.

71. The opinions, however, of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.¹¹⁴

Court may require production of thing referred to.

72. If oral evidence refers to the existence or condition of any material thing, other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.¹¹⁵

(xii) Documentary evidence

Rule as to documentary evidence.

73. The existence, condition, or contents of a public document may be proved either by primary or by secondary evidence.¹¹⁶ The existence, condition, or contents of a private document may be proved by primary evidence, and in certain circumstances may also be proved by secondary evidence.¹¹⁷ It should be remembered that the contents of a document, and not

matters recorded; these cases are dealt with separately.

Primary evidence.

74. Primary evidence is the production of the document itself for the inspection of the court, or, if it is one of a number of documents produced by a uniform process (e.g., printing, lithography or photography), the production of one of them¹¹⁸

¹¹¹ Indian Evidence Act, section 3

¹¹² Indian Evidence Act, section 53.

¹¹³ Indian Evidence Act, section 60

¹¹⁴ Indian Evidence Act, section 60, proviso 1.

¹¹⁵ Indian Evidence Act, section 60, proviso 2

¹¹⁶ Indian Evidence Act, sections 61, 64 and 65 (a)

¹¹⁷ Indian Evidence Act, sections 61, 64 and 65 (a) to (d), (f) and (g)

¹¹⁸ Indian Evidence Act, section 62

manuscript and a number of copies printed. Every copy is primary evidence of the contents of the others, but not of the contents of the manuscript.¹⁴⁹

75. If the document is of a kind which is required by law to be attested, but not otherwise, it is also necessary to call an attesting witness to prove its due execution. But this rule is subject to the following exceptions:—

Document which must be attested

- (a) If there is no attesting witness alive, subject to the process of the court, and capable of giving evidence, or if the document appears to have been executed in the United Kingdom, then it is sufficient to prove that the attestation of at least one attesting witness is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.¹⁵⁰
- (b) If the document is proved, or purports to be, thirty years old or more, and is produced from what the court considers to be its proper custody, an attesting witness need not be called, and it may be presumed without evidence that the document was duly executed and attested.¹⁵¹

76. Secondary evidence may be given of the existence, content or contents of a document¹⁵² in the following cases —

Secondary evidence, when given.

- (1) When the original is shown or appears to be in the possession or power of,—
 - (a) the opposite party, or
 - (b) any person out of reach of, or not subject to, the process of the court, or
 - (c) any person not legally bound to produce it, and when, after due notice (see section 66 of the Indian Evidence Act), such person does not produce it, any kind of secondary evidence (see para. 77 below) may be given.
- (2) When the existence, etc., of the original have been admitted in writing by the party against whom it is to be proved, the written admission is admissible as secondary evidence.
- (3) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time, any kind of secondary evidence (see para. 77 below) may be given.
- (4) When the original is of such a nature as not to be easily movable, any kind of secondary evidence (see para. 77 below) may be given.
- (5) When the original is of such a nature as not to be easily movable, any kind of secondary evidence (see para. 77 below) may be given.

document
law to be

¹⁴⁹ Indian Evidence Act, section 62, explanation 2.

¹⁵⁰ Indian Evidence Act, sections 68 and 69.

¹⁵¹ Indian Evidence Act, section 80.

¹⁵² Indian Evidence Act, section 65.

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used as evidence.¹⁹³ in such cases a certified copy is the *only* secondary evidence permissible.

- (6) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection, evidence may be given as to such general result by any person who has examined them, and who is skilled in the examination of such documents.

Secondary evidence, nature of.

77. Besides certified copies [see clause (5) of the preceding paragraph] secondary evidence of a private document given at a court-martial will generally take one of the following forms:¹⁹⁴—

- (1) Copies made from the original by a mechanical process which ensures accuracy (*e.g.*, photography) and copies compared with such copies.
- (2) Copies made from or compared with the original.
- (3) Oral accounts of the contents of a document given by persons who have seen it.

Public documents defined.

78. The following are "Public documents".—

- (1) Those which form the Acts or records of the Acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers.
- (2) Public records kept in British India of private documents.¹⁹⁵

Private documents defined.

All other documents are private.¹⁹⁶ As mentioned above secondary evidence can always be given of the contents of a public document. The nature of this secondary evidence varies with the character of the document, the most usual kind being a "certified copy,"¹⁹⁷ and if the document is one provable by a "certified copy," this is the *only* secondary evidence admissible.¹⁹⁸ The secondary evidence required to prove the various kinds of public documents is dealt with in sections 76 to 78 of the Indian Evidence Act, which should be consulted in the original, if necessary. The public documents specified in section 78 are provable as therein stated, all others (except certain English documents specially provided for in section 82 of the same Act and with which courts-martial are unlikely to be concerned) are provable by "certified copies" as provided for in sections 76 and 77.

Provisions as to extracts and copies of certain documents.

79. Under the special provisions of the Indian Army Act extracts from or copies of official records are in certain cases made admissible as evidence,¹⁹⁹ while under the general law referred to above²⁰⁰ orders and regulations of the Government of

¹⁹³ *e.g.* the Banker's Books Evidence Act (XVIII of 1891)

¹⁹⁴ Indian Evidence Act, section 63

¹⁹⁵ Indian Evidence Act, section 74

¹⁹⁶ Indian Evidence Act, section 75

¹⁹⁷ Indian Evidence Act, section 75

¹⁹⁸ Indian Evidence Act, section 65

¹⁹⁹ I. A. A., sections 91, 91A and 93

²⁰⁰ Indian Evidence Act, section 78

India are provable by copies purporting to be printed by order of that Government, and orders and regulations of His Majesty or a Department of the Home Government by copies purporting to be printed by the King's printer.

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(xiii) *Presumptions as to documents.*

80. Sections 79 to 90 of the Indian Evidence Act provide that certain documents shall be presumed to be what they purport to be, unless and until the contrary is proved, and that, as to certain others, courts may, in their discretion, either make a similar presumption or require the genuineness of the document to be proved by the party who puts it forward. This distinction between what courts "shall presume" and what they "may presume" should be noticed.²⁹¹ An instance of the former class of presumption is found in section 90 of the Indian Army Act which provides that certain signatures shall be presumed to be genuine until the contrary is shown. An instance of the latter is that regarding telegraph messages contained in the Indian Evidence Act.²⁹² A court may either presume that a message forwarded from a telegraph office to the addressee corresponds with a message delivered for transmission at the office of origin, or may require that fact to be proved by the party asserting it. This provision does not, however, authorise the court to make any presumption as to who delivered the message for transmission, nor as to the truth of its contents.

81. Where a contract, grant, or other disposition of property is reduced to the form of a document, the document itself (or secondary evidence of its contents when admissible) is, save in certain exceptional cases, the only admissible evidence of the matter which it contains, and the written contract cannot therefore, save as aforesaid, be varied by verbal explanations or additions.²⁹³

Contract, etc., rule, as to.

(xiv) *Of the Burden of Proof.*

82. The burden of proving the existence (or non-existence) of any fact lies on the side which wishes the court to believe in its existence or non-existence, as the case may be, and which would fail if no evidence at all were given on either side.²⁹⁴ In criminal trials the effect of this is that the burden of proof is, in the first instance, on the prosecutor, or as it is sometimes expressed, "every man is presumed to be innocent until he is proved to be guilty." An exception to the rule which puts the burden of proof on the person who asserts a fact, is that, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.²⁹⁵ The Indian Evidence Act gives as an illustration of this the case of a man ticketed, when, the ing that he had a of this principle

Burden of proof.

²⁹¹ Indian Evidence Act, section 4.

²⁹² Indian Evidence Act, section 88.

²⁹³ Indian Evidence Act, section 91 et seq.

²⁹⁴ Indian Evidence Act, sections 102 and 103.

²⁹⁵ Indian Evidence Act, section 106.

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to military life are the case of a man found within limits to which soldiers are forbidden to go without a pass, or charged with leaving the ranks or his post without leave. In every such case, the main fact being proved, the burden of proving possession of a pass or leave lies on the accused.

83. When any person is accused of an offence, the burden of proving the existence of facts bringing the case within any of the "general exceptions" of the Indian Penal Code or any special exception or proviso applicable to the particular offence is on the accused.²⁶⁶ For instance, A is accused of murdering B. The burden of proving that A killed B is on the prosecution. A, however, pleads grave and sudden provocation; the burden of proving this provocation is on A.

Rule as to
general and
special excep-
tions

Presumptions.

84. In certain cases the burden of proof is determined, not by the relation of the parties to the question at issue, but by what are called "presumptions." Certain presumptions have been discussed already in connection with documents, and section 114 of the Indian Evidence Act further provides that a court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business. A familiar instance of such a presumption is that a man who is in possession of stolen goods soon after the theft is presumed to be either the thief or a guilty receiver, unless he can account for his possession.

Burden of
proof may be
shifted.

85. As the trial goes on, the burden of proof may be shifted from the prosecutor to the accused by the proof of facts which raise a presumption of his guilt. Thus, A is accused of stealing a five-rupee note. The burden of proof is on the prosecution. He is shown to be in possession of the note soon after the fact. The burden of proof is shifted to A. A shows that the note was given him in change for a ten-rupee note. The burden of proof is shifted to the prosecution.

(xv) Witnesses.

Competency
of witnesses.

86. Under Indian law all persons, other than the accused or persons tried jointly with him,²⁶⁷ are competent witnesses unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of—

- (1) tender years,
- (2) extreme old age,
- (3) disease of mind or body, or
- (4) any other cause of the same kind.²⁶⁸

Comparison
with English
law.

87. The English law adds to these disqualifications "or from knowing that he ought to speak the truth." This omission in the Indian law prevents the occurrence of questions as to the condition of a witness whose age, appearance or circumstances

²⁶⁶ Indian Evidence Act, section 105

²⁶⁷ But the confession of a jointly tried person may be "taken into consideration" against the co-accused see para. 27 above.

²⁶⁸ Indian Evidence Act, section 118

suggest the probability of a want of moral perception. All that the court has to consider is whether he can understand the question and give a rational answer to it. Other considerations do not affect the admission of his evidence, though they may affect the question of how much weight is to be attached to it. The English law further disqualifies both the accused and his wife from giving evidence except for the defence, subject, in the case of the wife, to certain statutory exceptions. The Indian law, as already mentioned, absolutely disqualifies the accused from giving evidence. It however makes his wife (subject to the privilege mentioned, in para. 98 below) a competent witness both for the prosecution and defence.

88. Though the accused cannot give evidence, he is permitted to make unsworn statement in his defence,²⁰⁹ to which a greater or less degree of credence may be afforded, and which is one of the "matters before it" which the court is bound to consider when arriving at a decision as to whether the charge is or is not "proved."

Accused cannot give evidence but may make a statement.

89. Persons jointly tried are incompetent to testify against each other. If, therefore, the evidence of one accused person is required against another the former should be released, or a separate verdict of not guilty taken against him. An accused person so giving evidence is popularly said to turn King's evidence. If an accused person thinks that the evidence of one or more of the other persons proposed to be conjointly arraigned with him will be material to his defence, he should claim a separate trial.²¹⁰

Persons jointly tried cannot give evidence.

90. It follows from what has been stated that the evidence of an accomplice is admissible against his principal, and vice versa, unless they are tried together, but the evidence of an accomplice should always be received with great jealousy and caution. No particular number of witnesses is legally necessary to prove any fact²¹¹ and a conviction on the unsupported testimony of an accomplice is therefore, strictly speaking, legal.²¹² It is, however, the practice to require it to be confirmed by unimpeachable testimony in some material part, and more especially as to his identification of the person or persons against whom his evidence may be received.

Evidence of accomplice should be corroborated.

91. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing or signs must be made in open court. Evidence so given is deemed to be oral evidence.²¹³ The same rule would, no doubt, apply to a deaf, or deaf and dumb, witness, who might be communicated with by writing or signs provided the court was satisfied with the reality and accuracy of such communication.

Deaf or dumb witness.

92. A member of a court-martial is a competent witness in favour of the accused, and might, as such, be sworn or affirmed to give evidence at any stage of the proceedings, but the

Member as witness.

²⁰⁹ Rules 47, 48 and 104 and 145

²¹⁰ Rule 24

²¹¹ Indian Evidence Act, section 134

²¹² Indian Evidence Act, section 133

²¹³ Indian Evidence Act, section 119

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Indian Army Act Rules²¹⁴ direct that a witness for the prosecution shall not sit on a court-martial for the trial of any person against whom he is a witness. A member of the court must not communicate privately to other members of the court any special knowledge which he has, or thinks that he has, of the accused person's guilt or innocence, or act on private grounds of belief. If he wishes to give evidence, he must be sworn as other witnesses and be subject to cross-examination.

(xvi) *Privilege of Witnesses.*

Incriminating
questions;

93. It by no means follows that because a person is *compotent* to give evidence he is *compelled* to answer every question he may be asked when in the witness-box. Under English law, for instance, a witness may decline to answer any question which incriminates him, and though, in Indian law, there is no such absolute privilege,²¹⁵ still a witness, on such a question being put to him, is entitled to ask to be excused from answering it, and if, after his asking to be excused, the court compel him to answer (as they are entitled to do), his answer cannot be proved against him at any criminal proceeding, except a prosecution for giving false evidence by such answer.

Official
matters;

94. Another class of privilege is based on considerations of public policy. No one is permitted to give evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned.²¹⁶ No public officer can be compelled to disclose communications made to him in official confidence, if he considers such disclosure injurious to the public interests,²¹⁷ and in particular no magistrate or police officer can be compelled to state whence he got any information as to the commission of any offence.²¹⁸

Confidential
reports.

95. On this principle, a confidential report, or letter, or official information of a confidential character, although it may refer to matters which a court-martial may have decided to be relevant to the inquiry before it, cannot be produced or disclosed except by consent of the superior authority; and this consent is refused if the production or disclosure is considered detrimental to the public service. Proof of the refusal should be laid before the court by the examination of a witness, or by a written communication read in open court and attached to the proceedings.

Courts of
enquiry.

96. So also, the proceedings of a court of inquiry cannot be called for by courts-martial, nor witnesses examined as to their contents; nor is any confession or statement made at a court of inquiry admissible against an officer or soldier before a court-martial.²¹⁹ The only exception to this rule is in the case of a court-martial for giving false evidence before the court of inquiry.

²¹⁴ Rule 23 (D) (ii).

²¹⁵ Indian Evidence Act, section 132.

²¹⁶ Indian Evidence Act, section 123.

²¹⁷ Indian Evidence Act, section 124.

²¹⁸ Indian Evidence Act, section 125.

²¹⁹ Rule 125.

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97. The modified privilege referred to in para. 93 is the privilege of the witness, and therefore he may waive it, and answer (without being compelled to) if he chooses, but the privilege referred to in the following paragraphs is for the protection of other parties and cannot be waived except with their consent.

Privilege which cannot be waived.

98. A husband is not compellable to disclose any communication made to him by his wife during marriage; and a wife is not compellable to disclose any communication made to her by her husband during marriage.²²⁰

Communications during marriage.

99. A legal adviser is not permitted, whether during or after the termination of his employment as such, unless with his client's express consent, to disclose any communication, oral or documentary, made to him as such legal adviser, by or on behalf of his client, during, in the course of, and for the purpose of his employment, or to disclose any advice given by him to his client during, in the course of, and for the purpose of such employment. But this protection does not extend to—

Legal advisers—communications to.

- (1) any such communication if made in furtherance of any illegal purpose,
- (2) any fact observed by a legal adviser in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether his attention was directed to such fact by or on behalf of his client or not; or
- (3) any fact with which the legal adviser became acquainted otherwise than in his character as such.

The expression "legal adviser" includes the clerks of legal advisers and interpreters between them and their clients, and the person assisting a prisoner during trial before a court-martial.²²¹

100. The questions, whether answered or not, should be entered on the proceedings. When a witness claims the privilege of not answering, it is (except as mentioned in para. 94 above) for the court to decide whether the question is within any of the exceptions. Courts-martial may also in their discretion interpose by informing a witness, at the time when a question is put to him, that he is not bound to answer. Any such interposition, and any claim of privilege by the witness, and the fact whether the witness is required to answer or not, should be noted on the proceedings.

Procedure when privilege claimed.

(xvii) Of the Examination of Witnesses.

101. It will be the duty of the court in every case to see that the rules of evidence are strictly conformed to. The following points will require special attention in relation to any evidence that may be tendered:—

Points requiring attention of court.

- (a) That it relates to a "fact in issue" or "relevant fact."
- (b) That it is not within the rule rejecting hearsay evidence.

²²⁰ Indian Evidence Act, section 122.

²²¹ Indian Evidence Act, sections 126 and 127.

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- (c) That (except in the case of experts) it is not a mere expression of opinion.
- (d) That, if it is a confession or admission, it is legally admissible.
- (e) That, if it is a document, it is legally admissible and properly put in evidence.²²²
- (f) That no document or other thing is used for the purposes of the trial which has not been properly put in.²²³
- (g) That any witnesses called are legally competent to give evidence.
- (h) That any document with which a witness proposes to refresh his memory is legally admissible for the purpose.
- (i) That the examination of witnesses is fairly and properly conducted.

How examination of witnesses is conducted.

102. The points mentioned in (a) to (g) have been already considered and (h) will be noticed later. The Indian Evidence Act deals with (i) as shown in the following paragraphs. The examination of a witness by the person who calls him is called his examination-in-chief; and on this examination the questions must relate to the matters in issue at the trial or relevant to the issue. The court must, of course, in all cases see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege; and they must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him.

Leading questions.

103. Leading questions must not, if objected to by the adverse party, be asked in re-examination, except in cases as to which the court considers already sufficiently proved, or, ever, permitted.²²⁴ and the court may also allow leading questions to be put to a "hostile witness."²²⁵ A leading question is one suggesting the answer which the person putting the question wishes or expects to receive.²²⁶ For instance, a witness must not be asked, "Did the prisoner then go into the barrack-room?" but "What did the prisoner do next?" If it were not for this rule a favourable and dishonest witness might be made to give any evidence that is desired. On the other hand, it would be mere waste of time to enforce the rule where the questions asked are simply introductory and form no part of the real substance of inquiry, or where they relate to matters which, though material, are not disputed. But where a question relates to a contested point, which is either directly conclusive of the matter

²²² A document is said to be "put in" when it is produced to the court by a witness.

²²³ If on a charge for theft, the articles, the subject of the charge, must be produced and identified in the presence of the Court by witnesses or their absence satisfactorily accounted for. For purposes of identification a document or thing may, however, be shown to a witness before it has been formally proved and put in.

²²⁴ Indian Evidence Act, section 142.

²²⁵ *Ibid.*, second clause.

²²⁶ Indian Evidence Act, section 154.

²²⁷ Indian Evidence Act, section 141.

in issue, or directly and proximately connected with it, the rule should nearly always be applied, and no question should be allowed in a form which would lead the witness to the answer desired, or which admits of a conclusive answer by a simple *yes* or *no*.

104. Care must, however, be taken in enforcing this rule not to exclude questions which do not really suggest an answer, but merely direct the attention of the witness to the subject as to which he is questioned. It is often, indeed, extremely difficult in practice to determine whether or not a question is in a leading form, and in all such cases the real test should be whether or not the examination is being conducted fairly and with the object of eliciting the honest belief of the witness.²²¹

Test of what are leading questions.

105. When any article, such as a stick, belt, or document, is produced in court for the purpose of identification, the witnesses may be asked such questions as "Whether he recognises it," and "Whether he saw anything done with it, or to it;" but such a question as "Whether he saw A strike B with the stick or belt," or "Whether he saw A make an alteration in the document," should not be admitted.

Rules as to directing attention to articles.

106. The court may, in its discretion, permit the person who calls a witness to put any questions to him which the adverse party might put in cross-examination.²²² This is called the treating of a witness as "hostile." If a person calls a witness and the witness appears to be directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule forbidding leading questions fails, and the court may allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in every respect as though he were a witness called by the other side. In such circumstances he can therefore be asked questions tending to show his bad character, and his credit may be impeached in the same way as that of a witness called by the adverse party; neither of these things can be done under English law.

Hostile witness.

107. When the examination-in-chief is finished the opposite party cross-examines the witness. In cross-examination leading questions may be put and also questions, otherwise irrelevant, which tend—

Rules as to cross-examinations.

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit by injuring his character.²²³

108. A witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, without such writing being shown to him, but if it is intended to contradict him by the writing his attention must be called to it before it can be proved.²²⁴ It is often important that when a

Subject of cross-examination—continued.

²²¹ For examples of fair and unfair examination see *M St L*, Chapter VI, paragraph 109.

²²² Indian Evidence Act, section 154.

²²³ Indian Evidence Act, section 156.

²²⁴ Indian Evidence Act, section 145.

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witness is under cross-examination as to his previous statements, the fact of their having been reduced to writing should be concealed from him. It is only reasonable, however, that, when he has given his answer, he should be shown the document and have the chance of correcting himself. The summary of evidence may be used to prove any statement which the witness made, and which it is proposed to contradict, and evidence may be called to prove that the evidence of a witness, though consistent with the summary, is not consistent with the evidence given by him at the investigation before the commanding officer.

Subject of
cross-examina-
tion—conti-
nued.

109. Questions should not be allowed which assume that facts have been proved which have not been proved, or that answers have been given contrary to the fact. Nor should a witness be pressed in cross-examination as to any facts, which, if admitted, would not affect the matter at issue or the credit of the witness. And if the person cross-examining intends to adduce evidence contradicting the evidence given by the witness, he should put to the witness in cross-examination the substance of the evidence which he proposes to adduce, in order to give him an opportunity of retracting or explaining

Ditto: /

110. When a witness is under cross-examination he may be asked any questions which tend to test his veracity, discover who he is, or shake his credit by injuring his character. But a witness may of course decline to answer a question as to which he is entitled to claim privilege, and the right of asking questions tending merely to discredit, a right which has sometimes been seriously shuded in civil courts in England, is qualified in the case of trials under Indian law by section 148 of the Indian Evidence Act, which provides that when a question which is only relevant as affecting his credit by injuring his character is put to a witness, the court shall decide as to whether or not he shall be compelled to answer it, and that in exercising this discretion the court shall have regard to the following considerations:—

Injurious
questions.

- (1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies.
- (2) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies.
- (3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.
- (4) The court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

111. It is further provided that when a witness has been asked, and has answered, such a question no evidence can be given to contradict his answer.²²² This rule is however subject to two exceptions:—

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Exclusion of evidence to contradict answers to questions testing veracity, etc.

(1) When the witness is asked whether he has been previously convicted and denies it, evidence of his previous conviction may be given.

(2) When he is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, proof may be given of the truth of these facts.

112. The credit of a witness may be impeached by the adverse party, or with the consent of the court by the party who calls him, by the evidence of persons who testify that they, from their knowledge of witness, believe him to be unworthy of credit.²²³ Such persons may not, on their examination-in-chief, give reasons for their belief, but they may be asked their reasons in cross-examination, and their answers cannot be contradicted. When the credit of a witness is so impeached, the party who called the witness may give evidence in reply to show that the witness is worthy of credit.

Impeaching credit of witnesses.

113. The credit of a witness may also, under similar conditions, be impeached by proof that he has been bribed or by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted, and at trials for rape or an attempt to ravish it may also be shown that the woman against whom the offence is alleged to have been committed was of general immoral character.²²⁴

Subject continued.

114. In order to corroborate the testimony of a witness as to a relevant fact he may be asked questions as to any other circumstances which he observed at or near the time or place at which that fact occurred.²²⁵ Thus A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Corroboration of witnesses.

115. In order to corroborate the testimony of a witness, any former statements made by such witness relating to the same fact,—

Former statements by witnesses.

(1) to anyone, at or about the time when the fact took place; or

(2) at any time, before an authority legally competent to investigate the fact;

may be proved.²²⁶ The above conditions are, to some extent, a safeguard against fictitious statements designedly made to support subsequent evidence, but it is obvious that the corroborative value of such statements depends on the circumstances of each case, and that they may easily be entirely valueless. The mere fact of a man having, on a previous occasion, made the

²²² Indian Evidence Act, section 153.

²²³ Indian Evidence Act, section 155 (1).

²²⁴ Indian Evidence Act, section 155 (3), (5), (4).

²²⁵ Indian Evidence Act, section 156.

²²⁶ Indian Evidence Act, section 157.

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Re-examina-
tion.

same assertion, often adds but little to the chances of its truthfulness, and courts should distinguish such testimony from really corroborative evidence.

116. At the conclusion of the cross-examination the person who called the witness may, if he pleases, re-examine him; but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the other side may further cross-examine upon it.²²⁷

Refreshing
memory.

117. A witness may not read his evidence or refer to notes of evidence already given by him, but he may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court consider it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct. Whenever a witness may refresh his memory by reference to any document, he may, if the court is satisfied that there is sufficient reason for the non-production of the original, be permitted to refer to a copy of such document. An expert may also refresh his memory by reference to professional treatises.²²⁸ Any writing referred to under the provisions of this paragraph must be produced and shown to the adverse party if he requires it, and that party may, if he pleases, cross-examine the witness upon it.²²⁹

Notes referred
to are not
evidence of
themselves.

118. But a witness who refreshes his memory by reference to writing must always swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the memorandum or entry at the time it was written.²³⁰ If on referring to a memorandum not made by himself he can neither recollect the fact nor recall his conviction as to the truth of the account or writing when the facts were fresh in his memory, so that he cannot speak as to the fact further than as finding it noted in a written entry, his testimony is objectionable, *ex hear-say*.

(xviii) Conclusion.

Rule as to
evidence im-
properly re-
ceived or re-
jected.

119. Having thus dealt with the whole subject of Evidence as it concerns what evidence may be given, how, and by whom, the Indian Evidence Act concludes by putting it on a right level by providing that the improper admission or rejection of evidence shall not be ground of itself for invalidating a trial if it appears that, independently of the evidence improperly admitted, there was sufficient evidence to justify the decision of the court, or that, if the rejected evidence had been received, it ought not to have varied the decision.²⁴¹ This provision, while not excusing a court which deliberately breaks the law, will often prevent a miscarriage of justice where, through ignorance, some evidence

²²⁷ Indian Evidence Act, section 133²²⁸ Indian Evidence Act, section 159²²⁹ Indian Evidence Act, section 161²³⁰ Indian Evidence Act, section 160²⁴¹ Indian Evidence Act, section 167.

has been improperly admitted but, apart from it, enough remains to justify the finding, or where evidence has been similarly rejected, which, if admitted, ought not to have varied that finding.

120. If the members of a court-martial are in doubt as to whether any evidence is admissible or not, they should remember that the enumeration of relevant matters in the Indian Evidence Act is so wide that (provided the evidence tendered has anything at all to do with the case) "admissibility is the rule and exclusion the exception"²⁴² and that "where a judge is in doubt as to the admissibility of a particular piece of evidence he should declare in favour of admissibility rather than of non-admissibility."²⁴³

How to act when in doubt:

CHAPTER VI.

CIVIL OFFENCES.

(i) Introductory.

1. A "civil offence," for the purposes of the Indian Army Act, is one which, if committed in British India, would be triable by a criminal court. Certain of these offences are triable by military law at all times. These are offences of a political character, and murderous or violent crimes committed against persons subject to military law.²⁴⁴ With these exceptions, civil offences can only come before courts-martial on active service or beyond the limits of British India.²⁴⁵

Definition of a civil offence.

2. Most of the offences triable by criminal courts in British India are defined in the Indian Penal Code,²⁴⁶ an Act which codifies the criminal law of India, but a few as for example the offences against the Indian Official Secrets Act²⁴⁷ referred to below, are created by special statutes. None of these are, however, likely to be dealt with by courts-martial and they need not be considered here.

The Indian Penal Code.

3. A certain knowledge of the Indian Penal Code is required by officers who have to administer Indian military law, as many of the definitions of that code are imported into the Indian Army Act by section 7 (22) of the latter. Thus, wherever "theft," "assault" or "house-breaking" are mentioned in the Indian Army Act the offence so defined in the Indian Penal Code is intended, and, as pointed out in a previous chapter, all the penal sections of the former Act are subject to the "general exceptions" of the latter.

Ditto.

4. The Indian Penal Code has been included in Part IV of the present volume, whilst a table of offences against the ordinary

Ditto.

²⁴² Jardine, J., I. L. R., 16 Bom., page 668.

²⁴³ Straight, J., I. L. R., 12 All., page 26.

²⁴⁴ I. A. A., section 42.

²⁴⁵ I. A. A., section 41.

²⁴⁶ Act XLV of 1860, see Part IV of this Manual.

²⁴⁷ Act XIX of 1923, see Part IV of this Manual.

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Table of
offences and
punishment.

law, with the punishment assigned to each, is appended to the present chapter

5. The offences shown in this table are all contained in the Indian Penal Code, with the exception of the seven entries which relate to offences under the Indian Official Secrets Act. Though these offences are unlikely to be tried by court-martial, they have been included as dealing with a subject the law on which ought to be known to military men. The first column of this table shows how civil offences are described, and should be consulted when framing charges under section 41 or 42 of the Indian Army Act. For the full definitions of these offences, the Indian Penal Code in Part IV of this Manual should be consulted

Ditto:

6. The last column shows the punishment awardable for each offence, *by the law of British India*

If the offence is—

(1) one punishable with death or transportation, or

(2) one tried under section 42 of the Indian Army Act, a court-martial is (subject to the provisions of section 47 of the Indian Army Act) restricted to the punishments shewn in that column as awardable under the ordinary law or such other²⁴² punishment other than whipping as that law allows; while in other cases courts may either award the punishment other than whipping under the ordinary law or the punishment assigned to an act prejudicial to good order and military discipline (i.e., imprisonment up to 14 years or any less punishment mentioned in the Indian Army Act).

Field
punishment.

7. The only exception to this rule is that field punishment can be awarded to offenders under the rank of warrant officer on conviction of any civil offence, if committed on active service

Punishments
discussed.

8. Though the full penalty should only be awarded in extreme cases, a comparison of the various punishments provided will be useful as a guide to courts-martial as to the heinousness of each offence in the eye of the law.

Courts are
subject to their
own limitations

9. Courts are, of course, subject to their own limitations in cannot award sonment, even it is trying.

(ii) Responsibility for Crime.

Every one re-
sponsible for
natural conse-
quences of his
actions.

10. The general rule is that a person is responsible for the natural consequences of his acts. If, therefore, a person's acts, and the natural consequences which follow them, bring him within the penal provisions of the Indian Penal Code, he is criminally responsible under that code, unless his case falls within one of the "general exceptions"²⁴³ or any special exception applicable to the particular offence. Thus, a person who kills another under circumstances which amount to murder as defined in the Code,²⁴⁴ is liable to the punishment assigned to that offence; but

²⁴² See Indian Penal Code, sections 59 and 75

²⁴³ Chapter IV, Indian Penal Code

²⁴⁴ Indian Penal Code, section 300.

if he killed the other while himself in such a state of involuntary intoxication as would bring him within the terms of section 85, Indian Penal Code, or in the lawful exercise of his right of private defence (general exceptions), he is excused, while if he did it under grave and sudden provocation (a special exception)²⁵¹ his offence is reduced to culpable homicide.

11. Words in the code which refer to acts also extend to illegal omissions,²⁵² that is, omissions to do what a person is legally bound to do. The omission to do anything which one is not bound by law to do is not an offence; thus, if a man sees another drowning and is able to save him by holding out his hand, but omits to do so, even in the hope that the other may be drowned, still he is not criminally responsible.

Illegal omissions.

Ditto;

12. On the other hand, where the law considers that a person is bound to perform some particular act, he is held responsible if he omits to do so. For example, every person who has charge of another, e.g., a lunatic, an invalid, or a prisoner, is bound to provide him with necessities if he is so helpless as to be unable to provide himself: and if death results from a neglect of such duty, the person in charge will be responsible unless he can show some good excuse.

13. So, in the case of an animal known to be dangerous, the person in charge is bound to take such precautions as will safeguard the public from danger.

Example;

14. Similarly, if a person undertakes to do any act the omission of which may endanger human life (as, for instance, warning persons from a range whilst firing is going on), and, without lawful excuse, omits to discharge that duty he is responsible for the consequences. Again, if a person undertakes (except in cases of necessity) to administer surgical or medical treatment, or to do any other act which may be dangerous to human life, he is responsible if death results from a want of reasonable care and skill on his part. For instance, if a soldier were to undertake to cut off the trigger finger of another soldier and mortification set in, he would be responsible for the consequences of his act.²⁵³

Further examples.

15. When a person has no excuse to prevent his being criminally responsible for the result of his actions, his responsibility will not be limited to the simple case where he is present and commits an offence with his own hand.

Criminal responsibility for offences committed by others.

16. Thus, the Indian Penal Code provides that when a criminal act is done by several persons, in furtherance of the common intention of all, each is liable for that act as if he had done it alone.²⁵⁴ If, therefore, two or three men go out to commit house-breaking and one waits at the corner of the street to keep watch while the others break into the house, the watcher will be guilty of house-breaking equally with the others, though he never

Assisting in offence.

²⁵¹ *Ibid*, exception 1.

²⁵² Indian Penal Code, section 32.

²⁵³ In the class of cases referred to in this paragraph, there would rarely be such intention or knowledge as would make the offence murder or culpable homicide under Indian Law. It might often, however, amount to causing death by a rash or negligent act. Indian Penal Code, section 304A.

²⁵⁴ Indian Penal Code section 31

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goes near the house. Further, when an offence is committed by means of several acts, whoever intentionally co-operates by doing any one of those acts, commits that offence.²⁵³ If, therefore, in pursuance of a common intention to commit theft, A steals goods in a house and hands them to B who is waiting outside, and B then carries them away, both are guilty of theft. On the other hand, if the offence charged involves some special intent, it must be shown that the assistant was cognisant of the intentions of the person whom he assisted;²⁵⁴ thus since B in the last example knew of A's intention to steal, and waited outside the house to assist him, his offence was theft, but if he had been unaware of the intention till the goods were handed to him his offence would not have been theft but receiving stolen property.

Common intent.

17. If several persons go out with a common intention to execute some criminal purpose each is responsible for every offence committed by any one of them in furtherance of that purpose, but not for an offence committed by another member of the party which is unconnected with the common purpose unless he personally instigates or assists in its commission. Thus, if some of the party of house-breakers in the example given above are armed with revolvers, and the others all know it, thus showing a common intention not only to break into the house but to carry out their criminal object there in spite of all resistance, and the owner is killed in defending his property, all the party, including even the watchers outside, are guilty of murder. But if two persons go out to commit theft and one, unknown to the other, puts a pistol in his pocket and shoots a man, the other is not responsible.

Framing charges in certain cases.

18. Another case in which a person incurs full responsibility for the act of another is when an abettor (see para. 19 below) is present at the place when the act or offence he abets is committed.²⁵⁵ In this case, and in the cases referred to above, the person made responsible for the acts of another is deemed to be guilty of the actual offence committed and should be so charged, i.e., all the party in the first example in para. 16 should be charged with house-breaking, and, if murder results from the pursuit of their common intention (see para. 17), with murder also. Similarly if A instigates B to murder C (abettment) and A is present when B commits the murder, A is guilty of murder and should be so charged.

Abettment.

19. A person may make himself responsible for the crime of another by instigating, conspiring with, or intentionally aiding the actual criminal in one of the ways described in sections 107 and 108 of the Code. In such cases he cannot (except as already mentioned) be charged with the actual offence committed by the other, and must be charged with "abetting" that offence. See forms of charges under sections 40 and 42 of the Indian Army Act in the second appendix to the Rules. The abettment of an offence is punishable under section 109 of the Indian Penal Code and under sections 40 and 42 of the Indian Army Act.

²⁵³ Indian Penal Code, section 37.

²⁵⁴ Indian Penal Code, section 35.

²⁵⁵ Indian Penal Code, section 114.

20. It does not always follow that the person who commits the offence which is abetted is himself criminally responsible. Thus if A instigates B (a child under seven years of age²³⁸ or a person in a state of involuntary intoxication)²³⁹ to murder C, and B does so, A has abetted the murder of C, but B has committed no offence. Similarly, if a soldier, knowing that a pair of boots do not belong to him, induces a comrade to steal them by representing that they are his property and not the property of the actual possessor, the first man is guilty of abetting theft though the other has committed no offence at all.²⁴⁰

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Innocent agent

21. A person may also incur criminal responsibility even after an offence has been committed by helping the offender to escape from justice, or by destroying the evidence of his guilt. This form of responsibility is provided for in the sections of the Code which deal with harbouring and screening an offender.²⁴¹ Persons who offend against these sections do not however, make themselves fully responsible for the original crime, as in the cases referred to in para. 18 above, and cannot be so charged. The word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting of a person in any way to evade apprehension.²⁴² The wife or husband of an offender is exempted from any penalty for harbouring that offender; an exception to this rule is, however, the harbouring of a state prisoner who has escaped.²⁴³

Harbouring offenders.

22. Though the full text of the Indian Penal Code has been included in this work, and should be consulted, a few words as to certain offences may not be out of place. I. P. C. to be consulted.

(iii) Murder.

23. Whoever causes the death of a human being by doing an act— Culpable homicide.

- (1) with the intention of causing death, or
- (2) with the intention of causing such bodily injury as is likely to cause death, or
- (3) with the knowledge that he is likely by such act to cause death,

commits at the least culpable homicide,²⁴⁴ and his act may amount to murder if certain further conditions as to his intention and knowledge are present. The intention or knowledge, express or implied, of the accused in such a case is therefore all important and it lies on the prosecution to show, by direct evidence or by inference from the facts of the case, that he had such intention or knowledge as is necessary to constitute the offence charged. In arriving at a decision upon this point a court will,

²³⁸ Indian Penal Code, section 53

²³⁹ Indian Penal Code, section 55

²⁴⁰ Indian Penal Code, section 108, Illustration (d)

²⁴¹ Indian Penal Code, sections 136 and 212 to 215D

²⁴² Indian Penal Code, section 215D

²⁴³ Indian Penal Code, section 130

²⁴⁴ Indian Penal Code, section 299

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however, presume that a man intends the natural consequences of his acts. This presumption will often arise in shooting cases or in other cases where death is caused with a lethal weapon.

Murder.

24. The kinds of intention or knowledge which will make culpable homicide amount to murder are set forth in section 300 of the Indian Penal Code. If these are compared with para. 23 above, it will be seen that, subject to certain exceptions which will be considered later,³²³ culpable homicide of the first and second kinds is *always* murder, while culpable homicide of the third kind is only murder if the person committing the act which causes death knows it to be imminently dangerous and, without excuse, still does it. A knowledge that the act was likely to cause death is however essential to bring the case under clause (3) above. Thus, where a person hurt another, who was suffering from disease of the spleen, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of the other, it was held that the offence committed was that of voluntarily causing hurt.³²⁴

Exceptions.

25. Culpable homicide which would otherwise be murder is reduced to "culpable homicide not amounting to murder" in certain circumstances which are specified in the exceptions to section 300 of the Indian Penal Code. Briefly put these are—

- (1) Grave and sudden provocation.
- (2) Right of private defence exceeded.
- (3) Powers of public servant exceeded.
- (4) Sudden fight
- (5) Consent by the person killed

The full text of these exceptions will be found in another place, and should be consulted, but the first is that most frequently met with and demands more detailed notice.

Grave and sudden provocation.

26. It must be clearly established in all cases where grave and sudden provocation is put forward as an excuse, that *at the time* when the crime was committed the offender was actually so completely under the influence of passion arising from the provocation, that he was *at that moment* deprived of the power of self-control; and with this view it will be necessary to consider carefully the manner in which the crime was committed, the length of the interval between the provocation and the killing, the conduct of the offender during that interval, and all other circumstances tending to show his state of mind.

Subject to certain provisos.

27. This exception is further subject to three provisos,—

- (1) "If the person provokes the offender, the person provoked is not liable for killing B, the plea of grave and sudden provocation will not avail to save A if events fall out as he hoped, and he then draws a weapon and kills B."

³²³ See para. 25 below.

³²⁴ *Empress v. Fox*, 1 L. R., 2 All., 522.

- (2) Provocation given by anything done in obedience to law, or by a public servant in the lawful exercise of his powers, does not avail to reduce murder to culpable homicide. A non-commissioned officer lawfully arresting a private may provoke the latter very much, but if the arrest is lawful a plea of grave and sudden provocation will not avail him if he kills the former. On the other hand an unlawful arrest would constitute such provocation.
- (3) Provocation given in the lawful exercise of the right of private defence does not avail to reduce murder to culpable homicide. For what this right is section 97 *et seq.* of the Indian Penal Code should be consulted. An example would be,—A in defending himself and his property from B who is trying to rob him, strikes B in the face with a whip. This so enrages B that he kills A. B cannot successfully plead grave and sudden provocation.

28. It will be noticed that the intention and knowledge referred to in para. 23 are an intention to kill or vitally injure anyone, and a knowledge that the death of anyone is likely. Culpable homicide may therefore be committed by a person who intends to kill one man and kills another by mistake. In such a case the character of the culpable homicide is determined by what its character would have been if the person intended had been killed.²⁶⁷

Culpable homicide of persons other than the one intended.

29. In England, malice (i.e., the state of mind which turns manslaughter into murder) is presumed from the fact of killing, and the burden of proof is then on the accused. In India the position is somewhat different. The killing being established, the burden of showing such intention or knowledge as makes the crime murder or culpable homicide is still upon the prosecution.²⁶⁸ If, however, facts raising a presumption of such intention or knowledge (e.g., the nature of the weapon used) are shown to exist, the burden is shifted to the accused. The killing, and the requisite intention or knowledge being established, the burden is upon the accused of showing that his case falls within any general or special exception,²⁶⁹—as for instance, by showing that he acted under a *bona fide* mistake of fact and the fact (if true) would have excused him, or that he acted on grave and sudden provocation.

Burden of proof.

30. The penalty for murder is death, or transportation for life.²⁷⁰ A court can, at its discretion, award either penalty, but must sentence the offender to one or the other. When a person already under sentence of transportation for life is convicted of murder the death sentence is obligatory.²⁷¹

Penalty for murder.

(iv) Hurt and grievous hurt

31. Whoever causes bodily pain, disease, or infirmity to any person is said to cause "hurt,"²⁷² and if that hurt is one of the "hurt" and "grievous hurt" defined,

²⁶⁷ Indian Penal Code, section 301

²⁶⁸ Indian Evidence Act, section 103

²⁶⁹ Indian Evidence Act, section 105.

²⁷⁰ Indian Penal Code, section 302.

²⁷¹ Indian Penal Code, section 303

²⁷² Indian Penal Code, section 319

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graver kinds (specified in section 320 of the Indian Penal Code) he is said to cause "grievous hurt." Whoever does an act with the intention of causing hurt to anyone, or knowing that he is likely to cause hurt to anyone, and does thereby cause hurt to the same or any other person, is said "voluntarily to cause hurt." If the hurt intended or known to be likely to be caused is "grievous hurt" and the hurt actually caused is grievous hurt (either of the same or a different kind) he is said "voluntarily to cause grievous hurt."³⁷³

Voluntarily to cause hurt or grievous hurt to anyone is an offence which varies in its gravity according to the instrument used, the provocation given, the status of the person hurt, and the object of the offender. The table appended to this chapter shows the different descriptions of hurt and grievous hurt and the punishment awardable for causing each. The offence of voluntarily causing hurt or grievous hurt to any person subject to military law when committed by a person subject to the Indian Army Act is triable by court-martial at all times and in all places.³⁷⁴

(v) Criminal Force and Assault.

"Force" defined.

32. The sections of the Indian Penal Code which deal with these crimes are chiefly of interest to officers as defining the offences described in section 27 (d) of the Indian Army Act which are, unfortunately, not uncommon in the service. The definition of force in the Indian Penal Code³⁷⁵ is of a highly metaphysical nature but, for the ordinary purposes, there is little difficulty in understanding what is meant by the application of force to a person, or through a thing to a person, and whoever intentionally uses force to a person without his consent, in order to commit an offence, or with an intention to cause injury, fear or annoyance, is said to use "criminal force."³⁷⁶ Whoever makes any gesture or preparation—

"Assault."

- (1) intending to cause anyone to apprehend that the person making the gesture, etc., is about to use criminal force to him, or
- (2) knowing it to be likely that such gesture, etc., will cause such an apprehension,

is said to commit an "assault."³⁷⁷ Mere words cannot amount to an assault, but words accompanied by gestures or preparations may give the latter such a meaning as to amount to an assault.

33. It will be noticed that if actual violence is done to a person or attempted, an assault is not the proper word to use in a charge-sheet as describing the offence, which then becomes "using criminal force," or "attempting to use criminal force," as the case may be.

Difference between assault and use of criminal force.

³⁷³ Indian Penal Code, sections, 321, 322.

³⁷⁴ I. A. A., section 42.

³⁷⁵ Indian Penal Code, section 349.

³⁷⁶ Indian Penal Code, section 350.

³⁷⁷ Indian Penal Code, section 351.

(vi) Rape.

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34. Rape is defined in section 375 of the Indian Penal Code. Penetration is sufficient to constitute such sexual intercourse as is there referred to: it must therefore be proved that there was actual penetration by some part of the male organ or "res in re." The slightest penetration will be sufficient, it is not necessary to prove that there was such penetration as would be sufficient to rupture the hymen. Whether there was an emission of semen or not is immaterial.

It is not an excuse that the woman was a common strumpet, or the concubine of the ravisher, if the offence was committed by force or against her will; though proof of such facts is admissible, and is of course important in considering whether or not she is likely to have consented.

35. A consideration of Indian Penal Code section 375 will show that the offence consists in sexual intercourse with a woman against her will, without her consent, or even with her consent when such consent has been obtained by putting her in fear of death or hurt, or by pretending to be her husband, or with or without her consent when she is under twelve years of age; further, consent is not valid under the Indian Penal Code when given by a person who from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he or she gives consent.³⁷⁵ Sexual intercourse with a woman who has, by drugs or liquor, been reduced to such a condition as is indicated above will therefore be rape. Consent, when valid.

36. A word of caution regarding charges for this offence is necessary. As Lord Hale, an eminent judge, has said: "It is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused though never so innocent." Such charges are often brought from motives of revenge or blackmail, or to shield a reputation which has been voluntarily endangered. Courts should therefore examine and sift the evidence, especially that of the woman said to be ravished, with the greatest care. Caution as to evidence in cases of alleged rape.

37. When the offence is incomplete for want of penetration the accused may be convicted of an attempt to commit rape, provided that the court is satisfied that it was his intention to gratify his passions at all events and notwithstanding any resistance. An indecent assault with intent to have illicit intercourse is not sufficient, in itself, to constitute such an attempt.³⁷⁶ Attempted rape.

(vii) Theft and Cognate Offences.

38. Theft is defined in section 378 of the Indian Penal Code. It can only be committed in respect of movable property which is in the possession of someone. Property which can be subject of theft.

39. All corporal property except land and things attached to it is movable property.³⁷⁷ A difficulty which exists in English law is got over by the first and second explanations to section 378, which expressly state that things attached to the land Movable property.

³⁷⁵ Indian Penal Code, section 30.

³⁷⁶ Queen Empress v. Shankar, 1 L. R., 5 Bom., 403.

³⁷⁷ Indian Penal Code, section 22.

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³⁷³ Indian Penal Code, sections, 321, 322.

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Property which can be subject of theft.

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Movable property.

²⁷⁸ Indian Penal Code, section 50.²⁷⁹ Queen Empress v. Shankar, 1 L. R., 5 Bom., 403.²⁸⁰ Indian Penal Code, section 22.

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may become movable property by severance, and that the act of severance may of itself be theft. The cutting down of a tree, with the intention of dishonestly removing it without the owner's consent, is thus theft.²¹¹

Property must be in possession of someone.

40. The property must be in the possession of *someone*, but it does not matter whether that possession is rightful or wrongful. A thing can be stolen from a thief who has himself stolen it, not less than from the rightful owner of the thing. A person cannot steal a thing which is in his own possession, or a thing which is not in the possession of anyone. Wild animals (including game and fish), while at large, not being in the possession of anyone, cannot be the subject of theft, but if they have been tamed or are in confinement they can be stolen like any other property.²¹² When a man mislays property in his own house it still remains legally in his possession, and anyone finding it is bound to assume that it belongs to him.

Possession through another.

41. Property in the possession of a person's wife, clerk or servant on that person's account is in that person's possession within the meaning of the Indian Penal Code.²¹³ The same principle also extends to other cases where a man's property is in the physical possession of someone to whom he has entrusted it and from whom he can demand it unconditionally whenever he pleases. Thus where a servant has his master's plate in his keeping, or a shepherd is in charge of his master's sheep, the legal possession remains with the master; similarly the landlord of an inn retains the legal possession of the forks and spoons which his customers are handling at the dinner table and a shop-keeper retains the legal possession of goods which a purchaser takes up in order to inspect them. The possession of anything by a servant on his master's behalf is thus considered to be the possession of the master or the possession of the servant according to the circumstances under which the servant originally received it. If, for instance, a servant is given the custody of anything by his master, or by a fellow-servant who has been given the custody of it by his master, the servant will have no real possession of the thing, and the possession will remain in the master. Therefore any dishonest taking of the thing by the servant will be theft. If, however, a servant receives anything from a third person on his master's behalf, then the servant will have possession of the thing, and the master will have no possession until the servant does some act by which the possession is transferred from the servant to the master—as, for example, by placing it in a till, cart or godown in which the master's goods are kept or carried.

What constitutes theft?

42. To constitute theft there must be,—

- (1) a dishonest intention to take the property out of the possession of its real or temporary owner (i.e., he who has "possession" of it) without his consent, and
- (2) a moving of the property in order to such taking.²¹⁴

²¹¹ Indian Penal Code, section 378, Illustration (a).

²¹² Queen v. Renu Pothadu, 1 L. R. 5 Mad. 390; Maya Ram Surma v. Nichala Katani, 1 L. R. 15 Cal. 402; Queen Empress v. Shaik Adam, 1 L. R. 10 Bom. 133.

²¹³ Indian Penal Code, section 27.

²¹⁴ Indian Penal Code, section 378.

The intention must be a dishonest one,—that is, an intention to cause wrongful gain to one person or wrongful loss to another,³¹⁵ and therefore inconsistent with a *bona fide* claim of right. If the property is taken under the supposition, honestly entertained, that the taker has an immediate right to possession, the intention is not dishonest, and there is no theft; on the other hand a person who has pawned his watch can steal the watch from the pawnbroker, because he has no right to possession until he has redeemed it. A claim of right would not justify a person in taking property out of another's possession without his consent with the intention of thereby coercing the other to pay a debt due to the taker.³¹⁶ It must be remembered that consent is not valid if given under fear or misconception.³¹⁷ Some cases of what is known in English law as "larceny by a trick" will therefore be theft in Indian law, but in others this will not be so. Such cases, as well as those which are doubtful, should be charged as "cheating" See Indian Penal Code, section 415.

43. In addition to the dishonest intention there must be a **Moving.** moving of the property in order to the taking of it. It is not necessary to prove that the goods were removed out of their owner's reach, or were carried away at all from the place in which they were found. In this respect the Indian differs from the English law, under which some degree of "carrying away" is necessary. Here all that is necessary is movement, and, that being proved, and the other ingredients of theft being present, the offence is complete.

44. Closely allied to theft are the offences of dishonest **Other allied** misappropriation and criminal breach of trust. These differ offences. from theft in that while theft is committed in respect of property in the possession of another, these two offences consist in dealing dishonestly with property which is lawfully in the possession of the offender.

45. The dishonest misappropriation of property, honestly come by, is punishable with imprisonment which may extend to two years, or with fine, or with both, and even a temporary misappropriation, if dishonest, is within the terms of the section.³¹⁸ A common instance of this offence is the dishonest misappropriation of lost property by the finder. The mere taking of such property into his possession by the finder is not, in itself, an offence, but he is guilty of dishonest misappropriation if he appropriates it to his own use when he knows or has means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.³¹⁹ A person appropriates property to his own use when he sells it, realises it, or in any other way puts it out of his own power to restore it, or when he definitely makes up his mind to keep it at all hazards as his own.³²⁰ **Dishonest misappropriation.**

³¹⁵ Indian Penal Code, section 24.

³¹⁶ *Queen-Empress v. Sree Churn Chango*, 1 L. R., 22 Cal., 1017; *Queen-Empress v. Aga Muhammad Yusuf*, 1 L. R., 18 All., 83.

³¹⁷ Indian Penal Code, section 90.

³¹⁸ Indian Penal Code, section 403.

³¹⁹ *Ibid.*, explanation 2.

³²⁰ *Mayne, Criminal Law of India, Third Edition, Chapter XI, para.*

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Criminal breach
of trust.

46. Criminal breach of trust is defined in section 405 of the Indian Penal Code, from which it will be seen that the offence consists in a person who has been entrusted with any property, or with any dominion over it, dealing dishonestly with that property. A person is entrusted with property when he is given the actual possession of it, as, for example, when a servant receives property from a third party to deliver to his master but has not done any act to change his original possession into possession on account of his master. A person is entrusted with dominion over property when it remains legally in the owner's possession but he is given a limited authority to deal with it, as for instance a shopman who can dispose of his master's stock but must hand over to the latter the price he receives for it.

Stolen property
receipt of.

47. The receiving or retaining of stolen property is itself an offence.³³¹ For this purpose, the words "stolen property" includes property the possession of which has been transferred by theft, extortion, or robbery as well as property in respect of which criminal misappropriation or criminal breach of trust has been committed.³³²

Presumption
from recent
possession.

48. The guilty knowledge of the receiver must be established. The recent possession of the goods coupled with inability to give a reasonable account of such possession, justifies the presumption that the receiver got the goods dishonestly. The fact that he bought them much below their value, or that he falsely denied his possession of them, would be evidence of guilt. A person is considered to receive the goods as soon as he obtains control over them.

(viii) Concurrent Jurisdiction.

Concurrent
jurisdiction
of criminal
courts and
courts-martial.

49. A criminal court and a court-martial may sometimes both have jurisdiction in respect of the same offence, either by reason of its being triable by a military court under section 41 of the Indian Army Act at a place outside British India where a criminal court established by the authority of the Governor General in Council exists (e.g., a place where the political officer has the powers of a criminal court), or as being a civil offence triable by court-martial in British India under the provisions of section 41 or 42 of the Indian Army Act, or again because the same transaction constitutes both a civil and military offence, as for example, where a soldier steals from a comrade and thus commits both the civil offence punishable under section 379 of the Indian Penal Code and the military one punishable under section 31 (d) of the Indian Army Act. Such conflicts of jurisdiction are provided for by sections 69 and 70 of the Indian Army Act. The effect of these sections is to give the military authorities the right of deciding, in the first instance, as to which court is to try the alleged offender, but requiring them, if " . . . action and refer the point . . . for final decision, the . . . custody in the meantime. . . offences" contained in Ch. . . . (offences)

³³¹ Indian Penal Code, section 411³³² Indian Penal Code, section 410

relating to the Army and Navy), if committed by persons who are subject to the Indian Army Act, are not triable by the civil power²²² and are therefore not triable by a court-martial under section 41 of the Indian Army Act. Such an offence may, however, be tried by a court-martial if it amounts to a military offence or to some other civil offence triable under section 41 or 42 of the Indian Army Act and is so charged.

²²² Indian Penal Code, section 139.

Table of Offences and Punishments.

Description of offence.	Section of Indian Penal Code.	Punishment
Abetment — of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment ditto, if an act which causes harm be done in consequence of the abetment. of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment. of suicide, see "Suicide."	109 115 116 116	The same punishment as for the offence abetted. Imprisonment of either description for 7 years, or less, and fine (a) (b) Imprisonment of either description for 11 years, or less, and fine (a) (b) Imprisonment which may extend to one quarter of the longest term, and of any description provided for the offence, or fine, as for the offence, or both
Adultery — See also "Fornication, etc., a married woman."	497	Imprisonment of either description for 5 years, or less, or fine or both.
Assault — Committing an assault	100	Imprisonment of either description for 1 month or less, or fine of 100 rupees, or less, or both
Apprehension — Resistance or obstruction by a person to his lawful apprehension, or escape by a person from lawful custody, or attempt at such escape Resistance or obstruction to the lawful apprehension of another or rescuing or attempting to rescue him from lawful custody ditto, if the person is charged with an offence punishable with transportation for life, or imprisonment for 10 years ditto, if the person is charged with a capital offence	224 225 225 225	Imprisonment of either description for 2 years, or less, or fine, or both Imprisonment of either description for 2 years, or less, or fine, or both Imprisonment of either description for 3 years, or less, and fine (a) (a) (b) Imprisonment of either description for 7 years, or less, and fine (a) (b) Imprisonment of either description for 7 years, or less, and fine. (a) (b)
ditto, if the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years, or upwards ditto, if the person is under sentence of death	225	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (a) (b)

Assault and Criminal Force— Assault or use of criminal force— (a) to a public servant in discharge of his duty or to deter him from discharge of the duty. (b) to a woman with intent to outrage her modesty (c) to any person with intent to dishonour him, otherwise than on grave and sudden provocation (d) in attempt to commit theft of property worn or carried by a person (e) in attempt wrongfully to confine a person (f) in all other cases, in the absence of grave and sudden provocation Assault or use of criminal force on grave and sudden provocation.	353 354 355 356 357 352 358	Imprisonment of either description for 2 years, or less, or fine, or both. Ditto ditto. Ditto ditto. Ditto ditto Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both Imprisonment of either description for 3 months, or less, or fine of 500 rupees, or less, or both, Simple Imprisonment for 1 month, or less, or fine of 200 rupees, or less, or both.
Attempts— Attempts to commit, or cause to be committed, an offence punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence Attempt to commit murder See " Murder." Attempt to commit culpable homicide. See " Culpable homicide " Attempt to commit suicide. See " Suicide " Breach of trust. See " Criminal breach of trust."	511	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine as for the offence, or both [N.B.—Transportation for life is, for this purpose, reckoned as equivalent to transportation for 20 years.]
Cheating— Cheating Cheating by personation. Confinement. See " Wrongful restraint, etc." Courts of Justice, offences relating to. See " False evidence ", and " Public Servants, etc."	417 419	Imprisonment of either description for 1 year, or less, or fine, or both. Imprisonment of either description for 3 years, or less, or fine, or both.

Attempt to commit culpable homicide	•	•	•	•	•	308	Imprisonment of either description for 3 years, or less, or fine, or both.
<i>Mitto</i> , if the act causes hurt to any person	•	•	•	•	•	309	Imprisonment of either description for 7 years, or less, or fine, or both (b)
Dacoity	•	•	•	•	•	305	Transportation for life, or rigorous imprisonment for 10 years, or less, and fine. (a) (b).
Daughters Acts— Causing death by rash or negligent act	•	•	•	•	•	301A	Imprisonment of either description for 2 years, or less, or fine, or both.
Doing an act so rashly or negligently as to endanger human life or the personal safety of others	•	•	•	•	•	376	Imprisonment of either description for 3 months, or less, or fine of 200 rupees, or less, or both.
<i>Mitto</i> , if hurt is caused	•	•	•	•	•	337	Imprisonment of either description for 6 months, or less, or fine of 500 rupees, or less, or both.
<i>Mitto</i> , if grievous hurt is caused	•	•	•	•	•	378	Imprisonment of either description for 2 years, or less, or fine of 1,000 rupees, or less, or both.
Defamation	•	•	•	•	•	500	Simple imprisonment for 2 years, or less, or fine, or both, or both.
Disorderly misappropriation— “as movable property.”	•	•	•	•	•	•	
Extortion— Extortion	•	•	•	•	•	344	Imprisonment of either description for 3 years, or less, or fine, or both.
Extortion by putting a person in fear of death or grievous hurt to himself or another.	•	•	•	•	•	386	Imprisonment of either description for 10 years, and fine. (a) (b)
Fals Evidence— Giving or fabricating false evidence in a judicial proceeding	•	•	•	•	•	193	Imprisonment of either description for 7 years or less, and fine. (a) (b)
Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	•	•	•	•	•	194	Transportation for life or rigorous imprisonment for 10 years, or less, and fine. (a) (b)
<i>Mitto</i> , if innocent person be thereby convicted and executed	•	•	•	•	•	194	Death or as above. (a) (b)
Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for 7 years or upwards.	•	•	•	•	•	195	The same as for the offence.

Table of Offences and Punishments—contd.

Description of offence.	Section of Indian Penal Code	Punishment.
Food and Drink, offence relating to— Administering food or drink intended for sale, so as to make the same noxious. Selling any food or drink as such, knowing the same to be noxious.	272 273	Imprisonment of either description for 6 months or less, or fine of 1,000 rupees or less, or both Ditto
Forgery— Forgery	465	Imprisonment of either description for 2 years, or less, or fine, or both
Ditto, if document forged purports to be a will, valuable security or acquittance.	467	Transportation for life, or imprisonment of either description for 10 years, or less, and fine (a) (b)
Forgery for the purpose of cheating	468	Imprisonment of either description for 7 years, and fine (a) (b)
Fraudulently or dishonestly using as genuine a forged document which is known to be forged.	471	Punishment for forgery of such document.
Grievous hurt— Voluntarily causing grievous hurt (except on grave and sudden provocation). Ditto, by dangerous weapons or means	325 326	Imprisonment of either description for 7 years, or less, or fine (a) (b) Transportation for life, or imprisonment of either description for 10 years, or less, and fine (a) (b).
Voluntarily causing grievous hurt for the purpose of extorting property or constraining to an illegal act.	329	Transportation for life, or imprisonment of either description for 10 years, or less, and fine (a) (b)
Voluntarily causing grievous hurt for the purpose of extorting confession or compelling restoration of property.	331	Imprisonment of either description for 10 years, or less, and fine.
Voluntarily causing grievous hurt to public servant in discharge of his duty, or to deter him from his duty.	333	(a) (b) Ditto (a) (b)
Voluntarily causing grievous hurt on grave and sudden provocation	335	Imprisonment of either description for 4 years, or less, or fine of 2,000 rupees, or less, or both.

See also "Dangerous Acts."

Harboring and screening offenders— Harboring an offender, if the offence be capital. Ditto, if the offence be punishable with transportation for life or with imprisonment for 10 years Ditto, if the offence be punishable with imprisonment for 1 year and not for 10 years	212 212 212	Imprisonment of either description for 5 years, or less, and fine. (a) Imprisonment of either description for 3 years, or less, and fine. (a) Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both
Taking or offering gift (or restoration of property) in consideration of screening an offender, if the offence be capital Ditto, if the offence be punishable with transportation for life or with imprisonment for 10 years. Ditto, if the offence be punishable with imprisonment for less than 10 years	213, 214 213, 214 213, 214	Imprisonment of either description for 7 years, or less, and fine. (a) (b) Imprisonment of either description for 3 years, or less, with or without fine. Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.
Harboring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital. Ditto, if the offence be punishable with transportation for life, or with imprisonment for 10 years. Ditto, if the offence be punishable with imprisonment for one year and not for 10 years.	216 216 216	Imprisonment of either description for 7 years, or less, and fine. (a) (b) Imprisonment of either description for 3 years, or less, with or without fine. Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.
House-breaking, etc.— House-breaking or lurking house-trespass Ditto, in order to the commission of an offence punishable with imprisonment. If the offence is theft	453 454 454	Imprisonment of either description for 2 years, or less, and fine. (a) Imprisonment of either description for 3 years, or less, and fine. (a) Imprisonment of either description for 10 years, or less, and fine. (a) (b) Ditto ditto. (a) (b)
House-breaking, or lurking house-trespass, after preparation made for hurt, assault, or wrongful restraint.	455	Imprisonment of either description for 3 years, or less, and fine. (a) Imprisonment of either description for 6 years, or less, and fine. (a) Imprisonment of either description for 14 years, or less, and fine. (a) (b) Ditto ditto. (a) (b)
House-breaking by night, or lurking house-trespass by night Ditto, in order to the commission of an offence punishable with imprisonment. If the offence is theft	456 457 457	Imprisonment of either description for 3 years, or less, and fine. (a) Imprisonment of either description for 6 years, or less, and fine. (a) Imprisonment of either description for 14 years, or less, and fine. (a) (b) Ditto ditto. (a) (b)
House-breaking by night, or lurking house-trespass by night, after preparation made for hurt, assault, or wrongful restraint. Offences hurt caused or attempted whilst committing house-breaking or lurking house-trespass	458 458 459	Transportation for life, or imprisonment of either description for 10 years, or less, and fine. (a) (b)

Table of Offences and Punishments—contd.

Description of offence.	Section of Indian Penal Code	Punishment
House-trespass— House-trespass	448	Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both
House-trespass, in order to the commission of an offence punishable with death	449	Transportation for life, or rigorous imprisonment for 10 years, or less and fine (a) (b)
House-trespass if the offence be punishable with transportation for life, if the offence be punishable with imprisonment	450	Imprisonment of either description for 10 years, or less, and fine (a) (b)
If the offence be theft	451	Imprisonment of either description for 2 years, or less, and fine (a)
House-trespass after perpetration made for hurt, assault, or wrongful restraint,	451	Imprisonment of either description for 7 years, or less, and fine, (a) (b)
See also "House-trespass" under "House-breaking etc."	452	Ditto (a) (b)
Hurt— Voluntarily causing hurt (except on grave and sudden provocation)	323	Imprisonment of either description for 1 year, or less, and fine of 1,000 rupees, or less, or both
Ditto, by dangerous weapons, or means	324	Imprisonment of either description for 3 years, or less or fine, or both
Voluntarily causing hurt for the purpose of extorting property or constraining to an illegal act,	327	Imprisonment of either description for 10 years, or less, and fine, (a) (b)
Voluntarily causing hurt for the purpose of extorting confession, or compelling restoration of property,	330	Imprisonment of either description for 7 years, or less, and fine, (a) (b)
Voluntarily causing hurt to a public servant in discharge of his duty, or to deter him from his duty,	332	Imprisonment of either description for 3 years, or less, or fine, or both
Voluntarily causing hurt on grave and sudden provocation	334	Imprisonment of either description for 1 month, or less, or fine of 500 rupees, or less or both

Imprisonment of either description for 10 years, or fine, and fine.	(a) (b)
Imprisonment of either description for 2 years, or less, or fine, or both.	
Simple imprisonment for 24 hours, or less, or fine of 10 rupees, or less, or both.	
Imprisonment of either description for 3 months, or less, or fine, or both.	
Imprisonment of either description for 2 years, or less, or fine, or both.	Ditto
Imprisonment of either description for 5 years, or less, or fine, or both.	
Imprisonment of either description for 7 years, or less, and fine.	(a) (b)
Transportation for life, or imprisonment of either description for 10 years, or less, and fine.	(a) (b)

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Administering poison or intoxicating drug with intent to cause hurt, or commit an offence. See also "deceitful hurt."	
Insult— Insult intended to provoke a breach of the peace	
Intoxication— Mischief by intoxicating person, in public or in any place, which it is his duty to enter, so as to cause annoyance.	
Looking House-breakers— See "House-breaking, &c."	
Mischief—(1., wrongful damage to property: see Indian Penal Code, 425, for full definition).	
Mischief	
Mischief and thereby causing damage to the amount of 50 rupees or upwards	
Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	
Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of 50 rupees or upwards	
Mischief by fire, or explosive substance, with intent to cause, or knowledge that it is likely to cause, damage to the amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards	
Mischief by fire or explosive substance with intent to cause, or knowledge that it is likely to cause, the destruction of a building used as a place of worship, a human dwelling, or a place for the custody of property.	

Table of Offences and Punishments—contd.

Description of offence.	Section of Indian Penal Code.	Punishment.
Movable property— Dishonest misappropriation of movable property, or conversion of such property to one's own use.	403	Imprisonment of either description for 2 years, or less, or fine, or both.
Murder—		
Murder	302	Death, or transportation for life, and fine [Either death, or transportation for life must be awarded, fine may be added]
Murder by a person under sentence of transportation for life	303	Death
Attempt to murder	307	Imprisonment of either description for 10 years, or less, and fine (a)(b)
If hurt is caused	307	Transportation for life, or as above (a)(b)
If life-endangerment, if hurt is caused	307	Death, or as above (a)(b)
Negligent Acts. See "Dangerous Acts."		
Official Secrets Act, offences under— Offences in relation to any work of defence, arsenal, etc. of ships, in other cases Unauthorised communication, etc. of information Unauthorised use of uniforms, falsification of reports, forgery, personation, and false documents Interfering with officers of the police or members of His Majesty's forces, in relation to prohibited places, as defined in section 2(8a) of the Indian Official Secrets Act, 1923.	Section of Indian Official Secrets Act, 1923. 301 301 5 6 7	Imprisonment of either description for 14 years Imprisonment of either description for 3 years, or both Imprisonment of either description for 2 years, or fine, or both Ditto Ditto Ditto

	8	Ditto	Imprisonment of either description for 1 year, or fine, or both.
	10	Ditto	
	Section of Indian Penal Code.		
Falsely giving information as to commission of offences Hastening trial
Personation— Personation by cheating See "Cheating"	.	.	.
Public Servants and Courts, offences relating to— Not obeying a writ or order to attend in a Court of Justice	174	Simple Imprisonment for 6 months, or less, or fine of 1,000 rupees, or less, or both ditto,	
Intentionally omitting to produce a document, which he is legally bound to produce to a Court of Justice	175	Ditto	
Refusing oath when duly required to take oath by a public servant. Ising illegally bound to state truth and refusing to answer questions Intentional insult or interruption to a public servant sitting in any place of a judicial proceeding	176 179 224	Ditto Ditto Ditto	
See also "Apprehension," "Assault and Criminal Force," "False Evidence," "Offences Hurt" and "Jury"	.	.	.
Rapes	376	Transportation, for life, or imprisonment of either description for 10 years, or less, and fine (a) (b)	
Rash or Negligent Acts. See "Dangerous Acts"	.	.	.
Receiving See "Stolen Property."	.	.	.
Rescues. See "A Prisoner's Rescue"	.	.	.
Restraint. See "Wrongful Restraint"	.	.	.
Rioting— Rioting	147	Imprisonment of either description for 3 years, or less, or fine, or both	
Rioting armed with a deadly weapon	148	Imprisonment of either description for 3 years, or less, or fine, or both.	
Robbery— Robbery	392	Rigorous Imprisonment for 10 years, or less, and fine, (a) (b)	
Robbery on the highway between sunset and sunrise	392	Rigorous Imprisonment for 14 years, or less, and fine, (a) (b)	
Attempt to commit robbery	393	Rigorous Imprisonment for 7 years, or less, and fine, (a) (b).	

Table of Offences and Punishments—contd.

Description of offence.	Section of Indian Penal Code.	Punishment
Movable property. Dishonest misappropriation of movable property, or conversion of such property to one's own use.	403	Imprisonment of either description for 2 years, or less, or fine, or both.
Murder. Murder	302	Death, or transportation for life, and fine. [Either death or transportation for life must be awarded, fine may be added.]
Murder by a person under sentence of transportation for life	303	Death.
Attempt to murder	307	Imprisonment of either description for 10 years, or less, and fine (a)(b)
If hurt is caused by life-convict, if hurt is caused	307	Transportation for life, or as above (a) (b)
If hurt is caused by life-convict, if hurt is caused	307	Death, or as above (a) (b)
Negligent Acts. See "Dangerous Acts."	Section of Indian Official Secrets Act, 1923.	
Official Secrets Act, offences under—		
Crying in relation to any work of defence, arsenal, etc.	3(1)	Imprisonment of either description for 14 years
Crying in other cases	3(1)	Imprisonment of either description for 3 years
Violent communication, etc., of information	5	Imprisonment of either description for 2 years, or fine, or both
Unauthorized use of uniform, falsification of reports, forgery, impersonation, and false documents	6	Ditto
Interfering with officers of the police or members of His Majesty's forces, in relation to prohibited places, as defined in section 2(8) of the Indian Official Secrets Act, 1923.	7	Ditto

Abetting the commission of suicide, if suicide committed	306	Impunishment of either description for 10 years, or less, and fine (a) (b)
Attempt to commit suicide, if act done towards such commissioned	309	Simple Impunishment for one year, or less, or fine, or both (a) (b)
Theft—		
Theft	379	Impunishment of either description for 3 years, or less, or fine, or both
Theft in a building, tent or vessel used as a human dwelling or for the custody of property	380	Impunishment of either description for 7 years, or less, and fine.
Theft by a clerk or servant of property in the possession of his master or employer	381	Ditto ditto (a) (b)
Theft, preparation having been made for raising death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft, or to retiving after committing it, or to retaining property taken by it	382	Rigorous Impunishment for 10 years, or less, and fine (a) (b)
Unlawful assemblies—		
Being a member of an unlawful assembly	143	Impunishment of either description for 6 months, or less, or fine, or both
Joining an unlawful assembly armed with a deadly weapon	144	Impunishment of either description for 2 years, or less, or fine, or both
Joining or continuing in an unlawful assembly knowing that it has been commanded to disperse	145	Ditto ditto
Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse	151	Impunishment of either description for 6 months, or less, or fine, or both
UNLAWFUL OFFENCES	377	Transportation for life, or Impunishment of either description for 10 years, or less, and fine (a) (b)
Weights and measures. Offences relating to—		
1 fraudulent use of false instrument for weighing	264	Impunishment of either description for 1 year, or less, or fine, or both.
2 fraudulent use of false weight or measure	265	Ditto ditto
3 fraudulent use of false instruments for weighing, weights, or measures, intending them for fraudulent use	266	Ditto ditto
4 making or selling false instruments for weighing, weights or measures, for fraudulent use	267	Ditto ditto

Table of Offences and Punishments,—concd.

Description of offence.	Section of Indian Penal Code.	Punishment.
<p>Women, Offences relating to—</p> <p>1. Offending or taking away or detaining a married woman with intent that she may have illicit intercourse with any person.</p> <p>2. Uttering any word making any sound or gesture or exhibiting any object calculated thereby to insult the modesty of a woman.</p> <p>3. Intending upon the privacy of a woman, intending thereby to insult her modesty.</p> <p>See also "Violence" and "Harassment."</p>	<p>498</p> <p>509</p> <p>509</p>	<p>Imprisonment of either description for 2 years, or less, or fine, or both.</p> <p>Simple imprisonment for 1 year, or less, or fine, or both.</p> <p>Ditto ditto</p>
<p>Whorehouse and confinement—</p> <p>1. Unlawfully detaining any person</p> <p>2. Unlawfully confining any person</p>	<p>341</p> <p>342</p>	<p>Simple imprisonment for 1 month, or less, or fine of 500 rupees, or less, or both</p> <p>Imprisonment of either description for 1 year, or less, or fine of 1,000 rupees, or less, or both</p>

Note.—(a) Fine alone cannot be awarded for these offences. There must in addition be some award of imprisonment, or of transportation when the latter is admissible.

(b) The provisions of Indian Penal Code, section 59, apply to these offences.

CHAPTER VII.

DUTIES IN AID OF THE CIVIL POWER.

NOTE.—As regards Martial-law, see para. 7 below

1. An assembly which through the action of those composing it is likely to cause a disturbance of the public peace is an unlawful assembly. As soon as an act of violence is committed it becomes a riot; while, if the riot is committed with the intention of waging war against the king, it becomes an insurrection or rebellion. Unlawful assembly, and rebellion.

2. An officer called on to act in case of sudden tumult will seldom have any knowledge of the intention of the mob. For this reason, and to protect him from the serious consequences of a failure to appreciate the situation correctly, he is directed to take his instructions from a magistrate, whenever possible, and, in the absence of a magistrate, to act only when the public security is manifestly endangered. The obligation lies upon the magistrate, when he is present or within reach, to use all the ordinary means at his disposal to preserve public order. If further aid is required, he is empowered to call for military assistance, and the officer to whom the requisition is addressed will act as directed in this Chapter. His action must be limited to the dispersal of the assembly, and, subject to the orders of the magistrate, to the arrest and detention, but not the punishment, of the rioters. He must moreover, use as little force as is consistent with these objects. If he is compelled to act in the absence of the magistrate, and in anticipation of a requisition for troops, he should be even more careful to use no more force than is absolutely necessary. Relations Civil and Military Authorities.

3. In British India the civil authorities have power, under the provisions of the Act, to call for military assistance. Powers and duties of Authorities.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present, may cause it to be dispersed by military force.

130. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of, or of any Volunteers Act, military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

*** Army includes Auxiliary and Territorial forces (*vide* Auxiliary Force Act, section 32, and Territorial Force Act, section 15.)

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- (2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons

Where such a course is feasible the requisition should be given in writing but it is clear that this will often be impossible

Military assistance is, it will be seen, not to be called for unless the civil force is inadequate (of this the civil officer is the judge) but when called for must be accorded. The strength and composition of the force, the amount of ammunition to be taken and the manner of carrying out the operations, are matters for the decision of the military authorities alone.²²³ The degree of force which may lawfully be used depends on the nature of the occasion, for the force used must always be strictly limited by the necessity of the case and proportioned to the end to be attained, which is the dispersal of the assembly and the execution of such orders as the magistrate may pass in respect of the arrest and detention of its members. His Majesty's Government have emphatically laid it down that the primary factor of policy whenever circumstances unfortunately necessitate the suppression of civil disorder by military force within the British Empire is the use of the minimum amount of force necessary to secure the object in view.

Magistrate not available.

4. It may, however, happen that a serious situation arises when there is no magistrate within reach. This is provided for in the next section of the Code

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of His Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

This section confers powers to act without the presence of a magistrate only on commissioned officers of His Majesty's Army and then only when the emergency is so serious that the public security is manifestly endangered and it is not possible to communicate with a magistrate. As soon as it becomes possible to communicate with a magistrate, the officer must do so and must obey his instructions as to stopping or continuing his action. The principle laid down in the second subsection of section 130 applies also to action under this section.

Dispersing assembly.

5. When an officer is required by a magistrate (as in paragraph 3 above) or determines (as in paragraph 4) to disperse an assembly by force, he will, if his detachment is not already organised in platoons and sections, and does not exceed 40

men, tell it off into four sections. If it exceeds 40 men, he will tell it off into more sections than four. He will, before taking action, adopt the most effectual measures possible to explain to the people that if necessary fire will be opened and that if firing becomes necessary the fire of the troops will be effective. If he is of opinion that it is necessary to fire, but that the fire of a few men will attain the object of dispersing the assembly, he will personally give the command to a few specified men to fire. If a greater effort be required he will personally give the command to one of the sections to fire. He will, when telling off the sections, clearly indicate to the troops the officer or non-commissioned officer who is to order each section to fire, should it be necessary for more sections than one to fire at a time; and no order to a man or section to fire will be given by any person except himself or the officer or non-commissioned officer so indicated. Care must be taken not to fire on persons separated from the crowd who do not appear to be acting with it or inciting it or over the heads of the latter. The firing must be carried out with steadiness and be stopped the moment it becomes unnecessary. Firing with blank is forbidden. The fire, if firing is necessary, must be effective. Firing on specified ringleaders may sometimes be the most effective way of dispersing a crowd, and will be justified if it is necessary and likely to obviate greater bloodshed. Machine guns should not be employed to disperse rioters if the object to be attained can be secured without recourse to this weapon, and if so employed, the fire should be most carefully controlled.

6. The interests of officers, soldiers and others are protected by section 132 of the Code of Criminal Procedure, which is as follows — Protection from prosecution.

132 No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and—

- (a) no Magistrate or police-officer acting under this Chapter in good faith,
 - (b) no officer acting under section 131 in good faith,
 - (c) no person doing any act in good faith, in compliance with a requisition under section 123 or section 130, and
 - (d) no inferior officer, or soldier, or volunteer doing any act in obedience to any order which he was bound to obey,
- shall be deemed to have thereby committed an offence. ;

7. So long as the disturbances amount to no more than a Martial Law, the measures contemplated in this Chapter may be expected to suffice to restore order. Since the crowd is not acting in general defiance of the Government, the danger is, as a rule, local and disappears with the dispersal of the rioters and the arrest of the ringleaders. But where the disturbances are recurrent, wide-spread, concerted and directed against the

211 See R. A. I., para. 335 and R. R. paras. 1315-1321.

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constituted authorities it becomes the duty of the executive, in exercising the common law right of repelling force by force, to assume such exceptional powers and to take such exceptional measures as may be necessary for the purpose of restoring order.

The state of things thus set up is generally known as "Martial Law." Further information on this subject will be found in Chapter I (para. 16) of the Manual of Military Law and in the instructions relating to Martial Law which have been issued by Government to all concerned.

CHAPTER VIII.

MISCELLANEOUS.

(i) *Military Privileges.*

1. Under chapter XIII of the Indian Army Act persons subject to that Act enjoy certain privileges in their relations to civil courts in India and the law administered by these courts. In addition to these privileges certain others have been conferred upon these persons by various Acts of Parliament and statutes of the Indian and local legislatures. The most important of these privileges are:—

Pay protected.

(1) By section 136 of the Army Act the pay of an officer or soldier of the regular forces (including the Indian Army) is protected from any deductions other than those authorised by Act of Parliament, Royal Warrant, or Act of the Governor General in Council. As explained elsewhere, penal deductions are, in the Indian Army, legalised by the Indian Army Act, and other deductions by Royal Warrant, the exact amounts to be deducted, within the limits thus legalised, being settled by regulations.

Pension protected.

(2) All Government pensions (including military pensions) are protected from attachment in the execution of the decrees of civil courts.²²²

Civil suits.

(3) An officer or soldier, actually serving in a military capacity, who is a party to a suit and cannot obtain leave of absence may authorise any person to sue or defend in his stead. This authority must be in writing and be signed in the presence of his commanding officer.²²³

Exemption from court-leave in certain cases.

(4) A power of attorney to institute or defend a suit when executed by an officer, warrant officer, non-commissioned officer or private is exempt from fees under the Court Fees Act.²²⁴

Special protection in respect of civil and revenue litigation whilst serving under war conditions.

(5) All persons subject to the Indian Army Act whilst serving under war conditions²²⁵ are specially protected in respect of civil and revenue litigation under the provisions of the Indian Soldiers' (Litigation) Act, 1918, which is printed in full in Part IV of this Manual.

²²² Pensions Act, 1871, section 11; Code of Civil Procedure, 1908, section 60, proviso (g).

²²³ Code of Civil Procedure, 1908, Order XXVIII.

²²⁴ Court Fees Act, 1870, section 19.

²²⁵ Indian Soldiers' (Litigation) Act, section 3.

- (6) Receipts for pay or allowances of non-commissioned officers or soldiers, when serving in such capacity, need not be stamped.²²¹

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Receipts for pay need not be stamped.
Exemption from tolls when on duty.

- (7) All officers and soldiers of the regular forces on duty or on the march, as well as their authorised followers, families (including the families of such followers), horses, baggage, and transport are exempt from all tolls, except certain tolls for the transit of barges, etc., along canals.²²² This exemption extends to the Imperial Service Troops (see para. 7 below), their followers, horses and baggage, but not to their families or the families of their followers. It also extends to reservists on being called up for, or when returning to their homes, after training or service, and to their horses and baggage.

(ii) Indian Army Reserve.

2. In addition to the soldiers and others in permanent employment, a reserve for the Indian Army is maintained under the authority of the Indian Reserve Forces Act, 1888.²²³ This act provides for two classes of Reserve, viz., the Active and the Garrison, but the latter has been allowed to die out, and all reservists now belong to the Active Reserve. The only difference between them was that men of the Garrison Reserve were not available for service beyond the limits of British India.

Indian Reserve Forces Act, 1888.

3. A reservist is required to appear for training or muster according to the regulations of his branch, and when called up for service; at other times he pursues his ordinary civil avocations but must keep his commanding officer informed of his address and cannot leave India without permission. In return for these obligations a reservist receives pay at a lower rate than is issued to the soldier or other enrolled person whose services are permanently utilized. The reservist is subject to military law at all times, and can therefore be tried by court-martial for any military offence committed by him; he is also subject to the jurisdiction of the ordinary criminal courts for certain military offences specified in section 6 of the Indian Reserve Forces Act.

Obligations of the reservist.

4. The reserve is composed, for the most part, of men transferred to it from the colours either in accordance with the terms of their enrolment or at their own request (For further information with regard to persons for whom service in the reserve is a condition of enrolment and to those for whom transfer to the reserve is voluntary, R. A. I., should be consulted.) Men transferred at their own request serve on the conditions contained in their original enrolments, subject to certain modifications therein agreed to by them on their transfer to the reserve. In certain corps, however (e.g., Indian Army Service Corps) direct enrolments into the reserve are permitted, and in the Indian Army Service Corps Commissions as Indian officers of the Reserve are granted to Indian gentlemen who are suited for such employment.

Composition of the reserve.

²²¹ Indian Stamp Act, 1899, Schedule I.

²²² Indian Tolls (Army) Act, 1901, section 3; also A. A., section 123.

²²³ Act 11 of 1888. See Part IV of this Manual.

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(iii) *Other Forces existing in India.*

Indian Territorial Force.

5. An Indian Territorial Force has been formed under the authority of the Indian Territorial Force Act, 1920.²⁴⁴ Any British subject, not being a European British subject, and any subject of a State in India may offer himself for enrolment in this force and any person so enrolled is liable to perform military service when called out to act in support of the civil power or to provide essential guards, when the portion of the Territorial Force to which he belongs has been embodied or when attached at his own request to any regular forces. Officers and men of the Indian Territorial Force are subject to Indian military law, with such modifications as may be prescribed, when embodied for or undergoing military training. Officers are also so subject whenever doing duty as officers and men when called out or embodied for military service or attached to or acting as part of or with any regular forces.

Military police, Militia, frontier Constabulary and Levies.

6. In addition to the Indian Regular Army, its Reserve, the Territorial Force and the Auxiliary Force,²⁴⁵ which last (being governed by the Army Act when subject to military law) is outside the scope of this work, the Indian Government maintains a number of military or semi-military bodies under various names, e.g., military police, militia, frontier constabulary and levies. The discipline of these is generally provided for by a special enactment,²⁴⁶ but in some cases²⁴⁷ the military code of the Indian Army has been applied to such forces by notifications under section 5 of the Indian Army Act or the corresponding article of the Indian Articles of War, now repealed. The application of the Indian Army Act to bodies of military police (including the Assam Rifles), frontier militia, frontier constabulary, or levies maintained by Government, in any of the circumstances mentioned in section 2 (1) (c), Indian Army Act, other than the circumstance of active service in conjunction with a portion of His Majesty's forces would be very exceptional. The enactments by which such bodies are ordinarily governed would practically always suffice for their government in such circumstances, i.e., other than active service, and the Indian Army Act should not be applied to them by reason of section 2 (1) (c) of that Act without the special orders of the Government of India.

If, however, the law under which any of these bodies is governed does not exclude the application of the Indian Army Act, and if the Indian Army Act has not been applied in whole or in part or with modifications to any such body under section 5 of that Act, that Act may, by reason of section 2 (1) (c) thereof and without the special orders of the Government of India, be applied in its entirety to it when serving with regular troops on active service. In such circumstances it will be necessary for the Officer Commanding the force on active

²⁴⁴ See XLVIII of 1920. See Part IV of this Manual.

²⁴⁵ Auxiliary Force Act, 1920, section 77.

²⁴⁶ e.g., the Burma Military Police Act, 1917, the North West Frontier Constabulary Act, 1908, and the Assam Rifles Act, 1911.

²⁴⁷ e.g., the Madras and Mysore Phil Corps, the Mins Corps and the Indian Telegraph and Postmen Corps, Postal Air Force. See notifications in Part V of this Manual.

service to direct, in pursuance of section 3 (1) of the Act and of Army Department Notification 475 of 1912, that Indian officers, warrant officers and non-commissioned officers of such body shall be subject to the Indian Army Act as Indian Officers, Warrant Officers and non-commissioned officers, respectively. Before enforcing in such circumstances the provisions of the Indian Army Act against any member of such body the Officer Commanding the Force on active service should in the case of frontier militia, frontier constabulary (North-West Frontier Province) or levies, consult the Political Officer, if any, with the force, and in the case of military police (including the Assam Rifles) the senior officer of military police.

7. Lastly there are the Indian State Forces. These are bodies of troops maintained by the rulers of various States in India with a view to their active co-operation with the regular forces of the Crown in the defence of the Empire. The Imperial Government assists the States concerned with advice as to the instruction of these troops, a staff of military advisers being maintained for the purpose, but their command and discipline are in peace time entirely in the hands of their own rulers, and they are not subject to the military code of the Indian Army (as such), being in fact the troops of allied States and subject only to their own codes of military law. To obviate the difficulties which this might give rise to on service, the Indian Government has concluded a series of agreements with the rulers of the States concerned, under which arrangements are made for the command and discipline of these troops when beyond the frontiers of their own States. In these agreements each ruler has consented to enact as the State law applicable to his State Forces, when on active service, a law which embodies, *mutatis mutandis*, the provisions of the Indian Articles of War (now the Indian Army Act) for the time being in force. The State laws to which they are subject in time of peace are contained in the disciplinary laws of their State for the punishment of crime in State Forces to which reference is made below.

Indian States Forces.

8. The effect of the above arrangements³³³ is as follows:—

Arrangement for the discipline of the Indian States Forces.

Indian State Forces, when moved beyond the frontier of their own States, are under the orders and command of the officer commanding the division, brigade, contingent or force in which they are employed and are amenable—

- (a) in peace time, to the disciplinary laws of their State,
- (b) when employed on active service, to a State Code which embodies the provisions (*mutatis mutandis*) of the Indian Army Act

On active service the officer commanding the force in which they are employed is authorised to administer the provisions of the State law which embodies the Indian Army Act. He is empowered to enforce discipline by assembling courts-martial similar to those held under the Indian Army Act. If officers of the State troops are not conveniently available to serve on these

³³³ See Field Service Regulations, Part II, Indian Supplement, Chapter XIII

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courts-martial, British or Indian officers of the Indian Army may be detailed for the purpose.

(iv) *Civil officers and subordinates. Temporary subjection to the Indian Army Act and relative rank for precedence.*

9. The notifications under section 3 of the Indian Army Act regarding the manner in which civil officials and subordinates, when subject to that Act by reason of clause (c) of section 2 (1) thereof, shall be so subject are given in Part V. Put shortly certain civilians are subject to the Act as Indian officers, Warrant officers or Non-commissioned officers according to their civil status; others who have been granted by competent authority relative rank for precedence are subject to the Act as if they actually held that rank; and others not included in those already mentioned whose salary exclusive of field allowances is not less than rupees sixteen per mensem are subject to the Act as Warrant officers or Non-commissioned officers according to the amount of that salary. Civilians not included among those already mentioned whose salary exclusive of field allowances is less than rupees sixteen per mensem are, by reason of section 3 of the Act, subject thereto as if they were of a rank inferior to that of a non-commissioned officer. In any case in which there is doubt the officer commanding any force on active service can, by reason of the concluding portion of Army Department Notification No. 475, dated 17th May 1912, one of the notifications referred to above, direct that any civilian accompanying the force shall be subject to the Act as an Indian officer, Warrant officer or Non-commissioned officer.

10. The fact that civilians in Government service have become subject to the Act under the circumstances specified in section 2 (1) (c) thereof does not preclude them from being dealt with departmentally under any ordinary disciplinary rules as civilians only; but if they are dealt with under military law the procedure must be in accordance with the Indian Army Act and the Rules, etc., made thereunder, and they must be dealt with as Indian officers, Warrant officers, Non-commissioned officers or persons of rank lower than that of Non-commissioned officer in accordance with their relative military rank or status.

11. The relative rank for precedence that has been granted to various civil officials and subordinates is shown in the Table given in Part V to the Army Department notification already quoted. As explained in paragraph 2 of Chapter II the status conferred by relative rank is personal and does not give command over others. For instance a civilian having relative rank as subadar is not the superior officer, within the meaning of the Indian Army Act, of a sepoy. Relative rank does not carry with it the title of the rank so as to entitle the person to whom it has been granted to be called subadar, jemadar, etc., but it entitles him to take his place on a mixed committee and to transport, tentage, rations, etc., as if he held that rank.

Relative Rank
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ACT VIII OF 1911.

An Act to consolidate and amend the law relating to the government of His Majesty's [*] Indian Forces.

[As modified up to.....1920.]

WHEREAS it is expedient to consolidate and amend the law relating to the government of the Indian officers, soldiers and other persons in His Majesty's Indian Forces; It is hereby enacted as follows:—

NOTE.

The word "Native" was omitted from the title by the Indian Army (Amendment) Act, 1918, which Act also substituted the expressions "Indian" and "an Indian" for "native" and "a native" wherever these expressions occurred.

CHAPTER I.

PRELIMINARY

1. (1) This Act may be called the Indian Army Act, 1911.

Short title and commencement

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct in this behalf

NOTE.

(2) The Act came into force on January 1st, 1912. See Army Department Notification No 909, dated 3rd November 1911 in Part V.

Application of Act.

2. (1) The following persons shall be subject to this Act, namely:—

Persons subject to Act.

- (a) Indian officers and warrant officers;
- (b) persons enrolled under this Act;
- (c) persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces:

*[" " " " " "]

(2) Every person subject to this Act under sub-section (1), clause (a) or (b), shall remain so subject until duly discharged or dismissed.

* The proviso to the sub-section was repealed by the Indian Army (Amendment) Act, 1918

NOTE.

(2) (1) *Indian officers and warrant officers.*—See section 7 (2), (3).

Persons enrolled.—See sections 8 and 9. All persons subject to this Act under clause (a) or (b) of this sub-section are so subject at all times and wherever serving. See Part I, Chapter I, paragraph 2.

Persons not otherwise subject to military law.—See Part I, Chapter I, paragraph 10 and Chapter VIII, paragraphs 8, 9 and 10 and also with reference to military police, militia, frontier constabulary and levies, Chapter VIII, paragraph 6.

Frontier post.—For places declared to be frontier posts under this sub-section and sub-section (1) of section 22, see Army Department Notification No. 128, dated 12th September 1924 in Part V of this Manual.

(3) *Duly discharged or dismissed.*—See Chapter III of the Act and Rule 12 also, for dismissal as a court-martial sentence, see section 43, and Rule 134 (A). If a sentence of dismissal is combined with a suspended sentence of transportation or imprisonment the dismissal does not take effect until so ordered by a superior military authority. See section 2 of the Indian Army (Suspension of Sentences) Act in Part III of the Manual. A person who has once become subject to Indian military law under clause (a) or (b) above only ceases to be subject to it when he dies or is formally discharged or dismissed. The difference between dismissal and discharge is that the former does, while the latter does not, imply culpability. The regulations therefore provide that a person who is dismissed forfeits all claim to pension or gratuity, while one who is discharged receives whatever pension or gratuity he may be entitled to under the regulations applicable to his case.

Special provision as to rank in certain cases

3. (1) The Governor General in Council may, by notification, direct that any persons or class of persons subject to this Act under section 2 sub-section (1), clause (c), shall be so subject as Indian officers, warrant officers or non-commissioned officers, and may authorize any officer to give a like direction with respect to any such person and to cancel such direction.

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

NOTE.

(1) For notifications under this section and for a table showing the relative rank for precedence that has been granted to certain civil officers and subordinates when subject to the Act see Part V. The status conferred is a personal one and does not entitle its holder to any military command. See Part I, Chapter II, paragraph 2.

(2) and (3) For further information on the subject of the temporary subject to the Act of civil officers and subordinates see Part I, Chapter VIII, paragraphs 8, 9 and 10.

Commanding officer of persons subject to military law under section 2, sub-section (1), clause (c).

4. Every person subject to this Act under section 2, sub-section (1), clause (c), shall, for the purposes of this Act be deemed to be under the commanding officer of the corps, department or detachment (if any) to which he is attached, and if he is not attached to any corps, department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place

where such person is any officer of higher rank under whose command he can be placed

5. (1) The Governor General in Council may, by notification, apply all or any of the provisions of this Act to any force raised and maintained in India under the authority of the Governor General in Council.

Power to apply Act to certain forces under the Government of India.

(2) While any of the provisions of this Act apply to any such force, the Governor General in Council may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of that force.

NOTE.

Certain provisions of the I. A. A. have been applied to the Malwa and Mewar Hill Corps, the Mins Corps and the Indian Technical and Followers Corps, Royal Air Force. See Notifications in Part V of this Manual.

- [6. (1) Whenever persons subject to this Act are serving—
- (a) out of India under an officer not subject to the authority of the Governor General in Council, or
 - (b) in India under an officer commanding any military organisation not in this section specifically named and being, in the opinion of the Governor General in Council, not less than a brigade.

Officers to exercise powers in certain cases.

The Governor General in Council may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.]

(2) The Governor General in Council may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as he may think fit.

NOTE.

(1) This sub-section was substituted for the original sub-section by the Indian Army (Amendment) Act, 1918.

(1) and (2) Army Department Notification No 274, dated the 20th February 1925, as amended by Army Department Notifications No. 361, dated the 25th March 1927, No 139, dated the 6th February 1928, and No. 683, dated the 12th May 1928, is framed under this section and confers (subject to certain limitations as to dismissal and discharge) the powers of an officer commanding a division upon —

- The Officer Commanding the British Forces in Iraq;
- The Officer Commanding the Troops, South China Command.
- The Officer Commanding in Malaya;
- The Officer Commanding the Forces at Aden.

and those of an officer commanding a brigade upon —

- The Officer in immediate command of the Military Forces in Iraq.
- For the Notification see page 540 post.

Various officers have been, or may be, from time to time granted powers under clause (b) of this sub-section, but as these powers are generally granted to meet temporary situations, as they arise, the notifications granting them are not reproduced in Part V, with the exception of A. D. Notification No. 2163, dated the 29th October 1929, by which General Officers Commanding in Chief Commands and Officers Commanding Districts and Brigade Areas are granted the powers of an officer commanding an army corps, a district and a brigade respectively. The officers empowered will invariably be informed of the powers granted to them.

For what these powers are, see sections 14, 19, 21, 23, 102, 103, 106, 112 and 125-B of the Act, and Rules 13, 156, 157, 162-A (on active service only), 163-A and 164-B.

*Definitions.**Definitions.*

7. In this Act, unless there is something repugnant in the subject or context,—

(1) "British officer" means a person holding a commission in His Majesty's land forces and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in His Majesty's Air Force;

(2) "Indian officer" means a person commissioned, gazetted or in pay as an officer holding an Indian rank in His Majesty's Indian Forces:

(3) "warrant officer" means a person appointed, gazetted or in pay as an Indian warrant officer in His Majesty's Indian Forces:

(4) "non-commissioned officer" means a person attested under this Act holding an Indian non-commissioned rank in His Majesty's Indian Forces, and includes an acting non-commissioned officer:

(5) "officer" means a British officer or Indian officer, but does not include a warrant officer or non-commissioned officer:

(6) "commanding officer," when used in any provision of this Act with reference to any separate portion of His Majesty's forces or to any department, means the British officer whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision:

(7) "superior officer," when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer; and, as regards persons placed under his orders, a warrant officer or non-commissioned officer subject to the Army Act or to the Air Force Act: 44 & 45
c. 63.

(8) "army," "army corps," "division" and "brigade" mean respectively an army, army corps, division or brigade which is under the command of an officer subject to the authority of the Governor General in Council or, when on active service, an army, army corps, division or brigade under the command of an officer holding a commission in His Majesty's Land Forces:

(9) "corps" means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act:

(10) "independent brigade" means a brigade which does not form part of a division:

(11) "department" includes any division or branch of a department:

(12) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act:

(13) "active service," as applied to a person subject to this Act, means the time during which such person is attached

to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country:

(14) "military custody" means the arrest or confinement of a person according to the usages of the service:

(15) "military reward" includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other military pecuniary reward:

(16) "court-martial" means a court-martial held under this Act:

(17) "criminal court" means a court of ordinary criminal justice in British India, or established elsewhere by the authority of the Governor General in Council:

(18) "civil offence" means an offence which, if committed in British India, would be triable by a criminal court:

(19) "offence" means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined:

(20) "notification" means a notification published in the Gazette of India.

(21) "prescribed" means prescribed by rules made under this Act, and

(22) all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code

Notes.

(1) *Attested*—See sections 11 and 12 of this Act and Rules 8 and 9. Only "attested" persons are eligible for non-commissioned rank.

(2) This clause was substituted for the original sub-section by the Indian Army (Amendment) Act, 1918

(3) *Prescribed*—See Rule 16L.

(15) The terms of this definition are apparently wider than the corresponding one in the British Army Act in that it covers the period when a person is on the line of march to a country or place wholly or partly occupied by an enemy. It has, however, been ruled that "even before embarkation troops under orders to proceed to the seat of war are attached to or form part of, a force which is engaged in operations against the enemy" and are therefore on active service for the purposes of the Army Act (Note to section 189 of the Army Act in the War Office H. M. L.). The position is therefore practically the same under both Acts.

A person is "on the line of march" from the time he parades for the original march until he arrives at his ultimate destination.

(22) The Indian Penal Code is reprinted in Part IV.

CHAPTER II.

ENROLMENT AND ATTESTATION.

Enrolment

8. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and

Procedure before
officer.

explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

NOTE

¹ *Enrolling officer.*—See Rule 7 (A)

The conditions of service are, in the forms of enrolment at present prescribed, embodied in the questions which are put to the person to be enrolled, and his acceptance of these conditions is duly recorded therein. For list of classes to be enrolled, see R. A. I

Enrolment.

9. If, after complying with the provisions of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign [and shall also cause the person to sign]* the enrolment paper, and the person shall then be deemed to be enrolled.

NOTE.

* These words were inserted by the Indian Army (Amendment) Act, 1919

Presumption of enrolment in certain cases.

10. Every person who has for the space of six months been in the receipt of military pay and been borne on the rolls of any corps or department [* * *]* shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enrolment.

NOTE.

* The words "(of which the last pay statement, if produced, shall be evidence)" were repealed by the Indian Army (Amendment) Act, 1918.

Attestation.

Persons to be attested.

11. The following persons shall be attested, namely:—

- (a) all persons enrolled as combatants,
- (b) all other enrolled persons prescribed by the Governor General in Council.

NOTE.

Attestation involves no further liabilities beyond those assumed at enrolment but confers upon the attested person certain privileges. It is reserved for combatants and such higher classes of non-combatants as Government considers deserving of being treated in a similar manner to combatants. See Rule 8. The discharge of an attested person can, as a rule, only be authorized by the higher military authorities, while that of an enrolled person who has not been attested (e.g. recruits and followers) can be authorized by his commanding officer. See Rule 13. Only attested persons are eligible for non-commissioned rank.

Mode of attestation.

12. (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, His heirs and successors, and that he will serve in His Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

NOTE

The proper authority to attest a person subject to this Act is generally his immediate commanding officer who should do so in the ceremonial manner here indicated. For list of other "attesting officers" see Rule 9 (B). The oath or affirmation to be administered on attestation is set forth in Rule 9 (A), the notes to which contain its translation into certain vernacular languages.

CHAPTER III.

DISMISSAL AND DISCHARGE

13. The Governor General in Council or the Commander-in-Chief in India may dismiss from the service any person subject to this Act

Dismissal by Governor General in Council and Commander-in-Chief in India. Dismissal by officer commanding army, [army corps], division, brigade, etc.

14. An officer commanding an army *[army corps], division or brigade, or any prescribed officer, may dismiss from the service any person serving under his command other than an Indian officer

NOTE

* These words were inserted by the Indian Army (Amendment) Act, 1918

Prescribed officer—See Rule 151 A.

Other than an Indian officer—Indian officers receive their commissions from the Governor General in Council and only the higher authorities (see section 13) are therefore empowered to dismiss them. Similar restrictions are, by Rule 13, placed on their discharge otherwise than at their own request, or on completing 32 years service or when invalided.

All persons sentenced to transportation (except persons sentenced by court-martial whose sentences are suspended) and such persons sentenced to imprisonment as it is not desired to retain in the service will, if not dismissed by the sentence of a court-martial, be dismissed under this section or under section 13. Commanding officers will use their discretion in applying for the dismissal and the higher authorities their discretion in ordering it. Such a dismissal should not be applied for, or at any rate should not be put into effect, until the convict or prisoner sentenced by court-martial has been committed to a civil prison. In the case of a sentence passed by a civil court the application should, if the dismissal is desired, be made over as soon as possible after the sentence passed by the civil court has become absolute either by an appeal not being preferred within the period allowed by law or by the appeal being dismissed. The period within which an appeal against a sentence of transportation or imprisonment must be preferred is sixty days from the date of sentence if the appeal is to a High Court and thirty days if it is to any other court (Indian Limitation Act, 1908, First Schedule, Nos 154 and 155). In special cases, a prisoner whom it is not desired to retain in the service, may be discharged instead of being dismissed.

Dismissal involves, under existing regulations, the forfeiture of claim to any pension or gratuity which may have been earned. *Discharge* does not involve such forfeiture.

Division or brigade—Now also District and brigade areas.

Army corps—Now also Command.

Dismissal of
convicts.

15. [This section was repealed by the Indian Army (Amendment) Act, 1918.]

Discharge.

16. The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

NOTE.

For authorities competent to authorise discharge see Rule 13 and table annexed thereto. The discharge of a person who is, under the conditions of his enrolment entitled to be discharged must be authorized and completed with all convenient speed (Rule 16) by the proper authorities (Rules 12 and 13). Until it has been so completed the person remains subject to military law. Any unnecessary delay in completing his discharge would, however, give him good ground for complaint. The words "with all convenient speed" have been held to mean "without unreasonable delay under the circumstances" and will thus admit of a short delay when such is absolutely necessary.

Certificate to
person dismissed
or discharged.

17. Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—

- (a) the authority dismissing or discharging him;
- (b) the cause of his dismissal or discharge;
- (c) the full period of his service in the army.

Discharge, etc.,
out of India.

18. (1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall before being discharged, be sent to India with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed:

*[Provided that, where any such persons is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of transportation or imprisonment, a portion of such other punishment, may be inflicted before he is sent to India.]

*[(3) " " " "]

NOTE.

Out of India.—For summary dismissals or summary discharges ordered or authorized at Imperial stations out of India see Army Department Notification No. 274, dated the 20th February 1925, and notes thereto on page 543 post.

All convenient speed.—For the meaning of this phrase see the note to section 16.

The provision to sub-section (2) is permissive and must be read with sections 105, 107, 108 and 108 A which provide for the infliction of sentences of transportation and imprisonment passed by courts-martial. The result is that, unless the sentence is one of imprisonment which can be undergone in military custody under section 105, or 107 or in regard to which an order for its infliction or partial infliction in local civil custody has been made under section 108, a prisoner cannot legally be kept abroad to undergo his imprisonment, but must be sent to a civil prison in India where it can be inflicted in accordance with this Act. Persons sentenced to transportation must be sent to such a prison but, until so sent, may be dealt with as if sentenced to rigorous imprisonment. See section 108 A.

On active service special arrangements for a military prison in the field are, where necessary, made under the second provision to section 107.

Persons sentenced to dismissal and imprisonment can legally be retained in such a prison to undergo the whole or any part of their terms of imprisonment before being sent to India under subsection (2) of this section. Persons sentenced to transportation may be kept temporarily in such a military prison until transported. See section 108 A.

* The proviso to subsection (2) was added by the Indian Army (Amendment) Act, 1918.

* Subsection (3) was repealed by the Indian Army (Amendment) Act, 1918.

CHAPTER IV.

SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT-MARTIAL.

19. (1) The Commander-in-Chief in India, an officer commanding an army [army corps], division or brigade, or any prescribed officer, may reduce to a lower grade or to the ranks any non-commissioned officer under his command. Reduction of non commissioned officers.

(2) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer or, if he has no permanent grade above the ranks, to the ranks.

NOTE.

* These words were inserted by the Indian Army (Amendment) Act, 1918

(1) Any prescribed officer—See Rule 162.

(2) Commanding officer—See section 7 (6) and R. A I, paragraphs 237 and 238

Army Corps—Now also Command.

Division or brigade—Now also District and Brigade area

20. (1) The Commander-in-Chief in India may, subject to the control of the Governor General in Council, specify the minor punishments to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded. Minor punishments.

(2) Imprisonment in military custody *[and in the case of persons subject to this Act on active service any prescribed field punishment] may be specified as minor punishments, provided that—

(a) the term of such imprisonment *[or field punishment] shall not exceed twenty-eight days; and

(b) it shall not be awarded to any person of or above the rank of non-commissioned officer, or who when he committed the offence in respect of which it is awarded, was of or above such rank

NOTE.

* These words were inserted by the Indian Army (Amendment) Act, 1920

The minor punishments which have been specified under this section will be found in R. A I. The more important punishments are reprinted in tabular form below. These punishments should only be awarded after investigation—see Rules 15 to 17. The same principle is applicable to the award of minor punishments by officers other than commanding officers.

Table of Minor Punishments.

Certain General and other officers may summarily award forfeiture of seniority not exceeding twelve months and reprimand or severe reprimand to an Indian Officer or Warrant Officer, subject to the right of the accused in the case of an award of forfeiture of seniority to claim trial by Court-Martial

A "commanding officer" as defined in section 7 (5) may, if—

- (1) of field rank, or
- (2) under field rank but specially authorised by name by the Officer Commanding, the Command, Division or Independent Brigade to award imprisonment up to 28 days, or
- (3) not below the rank of Captain commanding a Depot in India—award to persons subject to this Act other than Indian Officers the minor punishments as in (i)–(ix) below Other "Commanding officers" are restricted with regard to the award of imprisonment only. They can award imprisonment not exceeding 7 days and a Lieutenant commanding a Depot in India imprisonment not exceeding 14 days
 - (i) Imprisonment (rigorous or simple) not exceeding 28 days If rigorous imprisonment is awarded any portion of the imprisonment not exceeding 7 days may be with solitary confinement
 - (ii) Confinement to the lines not exceeding 28 days An award of more than 14 days carries with it punishment drill for 14 days, otherwise for each day of the award
 - (iii) Extra guards and pickets in the case of combatants for minor offences on those duties. In the case of non-combatants extra duties or fatigues according to their status and occupation
 - (iv) Deprivation of acting rank or of a position of the nature of an appointment
 - (v) Forfeiture of a rate of good service or good conduct pay
 - (vi) Reprimand or severe reprimand in the case of warrant officers and non-commissioned officers (including acting non-commissioned officers) only
 - (vii) Fine in the case of reservists under training and non-combatants, up to 50 amount not exceeding 7 days' pay in any one month
 - (viii) Field Punishment Nos 1 or II not exceeding 28 days on active service only.
 - (ix) Stoppages as authorised by section 50 (f) of this Act
 - (x) Forfeiture of engineer or working pay for misconduct, negligence or inefficiency connected with the work for which such pay is received Either the whole or part of such pay for each day the offence is committed may be forfeited or the offender may be directed temporarily or for inefficiency permanently.

For the punishments awardable to military medical pupils and to regimental boys and for details generally see R. A. I.

Notes.

- (a) (i), (ii), (vii) and (viii) cannot be awarded to warrant officers
- (b) (i), (ii) and (viii) cannot be awarded to non-commissioned officers
- (c) (i), (ii) and (iii) may be awarded separately or conjointly but imprisonment must precede confinement to the lines and the total period of imprisonment and confinement to the lines must not exceed 28 consecutive days
- (d) (vii) In the case of reservists under training, may not be awarded in addition to any other punishment; in the case of non-combatants, may be awarded separately or conjointly with any one punishment other than imprisonment
- (e) A Medical Officer commanding a hospital or other medical unit is, for the time being, the Commanding Officer (for the purpose of awarding minor punishments) of a person subject to the Indian Army Act not belonging to the medical personnel who is a patient in, or is employed in, that hospital or medical unit and may either himself dispose of a charge against such person or refer it for disposal, after the person has left the hospital or medical unit, to the officer commanding the corps, department or detachment to which such person belongs or is

attached, but the medical officer in charge of a regimental medical establishment is not, unless that establishment is detached, the Commanding Officer for this purpose of that establishment or of any person who is a patient in, or is employed in, the medical unit to which that establishment belongs.

(f) A departmental (*i.e.*, Commissioners, Deputy Commissioners, Assistant Commissioners and Senior Assistant Surgeons of the Indian Medical Department) commanding officer can only award minor punishments if specified in that behalf by the Commander in Chief. If in independent charge he may fine non-combatants to the extent of four days' pay a month without being specified as above.

(g) For minor breaches of prison discipline a prisoner, while undergoing rigorous imprisonment in military custody, may be awarded by the Commanding Officer

- (1) Reduction of diet for not longer than 3 days at a time.
- (2) Additional hard labour and punishment drill not exceeding together two hours daily, for not longer than seven days at a time.

2. Subject to the abovementioned restrictions and conditions if authorised by his Commanding Officer—

(a) An Indian Officer Commanding a detachment may award:—

- (i) Imprisonment (rigorous or simple) not exceeding 7 days.
- (ii) Confinement to the lines not exceeding 7 days.
- (iii) Extra guards or picquets
- (iv) On active service Field Punishment up to 7 days.

(b) A Squadron, Battery or Company Commander and an Adjutant may award:—

- (i) Confinement to the lines not exceeding 10 days.
- (ii) Extra guards or picquets, up to a limit of three such duties for any one offence.

(c) Other British Officers may award:—

Confinement to the lines not exceeding 7 days.

(d) Indian Officers may award:—

Confinement to the lines not exceeding 3 days.

21. Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army [army corps], division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry, impose a collective fine upon the Indian officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft. Collective fines.

NOTE.

This section permits of collective responsibility for losses or thefts of arms being enforced. The amount and incidence of the fine to be imposed is regulated by Rule 157. See also section 113 (2) (b). Fines cannot be imposed in respect of weapons or parts of weapons not enumerated in Rule 157.

Army Corps, Division—Now also Commands, and District.

* These words were inserted by the Indian Army (Amendment) Act, 1918.

22. (1) For any offence, in breach of good order, the commanding officer of any corps or detachment on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf at which troops are stationed, may punish any Indian follower of such corps or detachment who is subject to this Act under section 2, sub-section (1), clause (c)— Punishment of certain Indian followers.

(a) if such follower is not a menial servant with imprisonment for a term which may extend to thirty

days, or with fine which may extend to fifty rupees;

- (b) if such follower is a menial servant, with imprisonment for a term which may extend to seven days, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan.

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail, as ordered by the said commanding officer; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant or until he is discharged by due course of law.

NOTE.

Frontier post.—See notes to section 2. When they become subject to military law khalaas of the Survey Department and workmen (entertained for the campaign) of the Telegraph Department are graded as Sepoys and not as followers.

Corporal punishment under this section is only awardable on active service.

Warrant under the hand, etc.—Form B in the fourth appendix to the rules with necessary modifications, may be used in the preparation of such a warrant.

Provost-Marshals

Appointment

23. For the prompt and instant repression of irregularities and offences committed in the field or on the march, provost-marshals may be appointed by the Commander-in-Chief in India or an officer commanding an army [army corps], division or independent brigade or an officer commanding the forces in the field; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

NOTE

Army Corps, Division.—Now also Commands, and District

* These words were inserted by the Indian Army (Amendment) Act, 1918.

Duties and powers.

24. (1) The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the army. [He may at any time arrest and detain for trial any person subject to this Act who commits an offence and may also carry into effect any punishments to be inflicted in pursuance of the sentence of a court-martial.]

(2) A provost-marshal may punish with any punishment mentioned in section 22, sub-section (1), clause (b), any follower who is subject to this Act under section 2, sub-section (1), clause (c) and is a menial servant and who on active service and in his view, or in the view of any of his assistants, commits any breach of good order and military discipline.]

NOTE.

(3) (5). A provost-marshal may be appointed in time of peace by any of the authorities specified in section 23 (2), for a force engaged in

manuvres), but a provost-marshal so appointed has no powers of punishment. Corporal punishment under sub-section (2) of section 24 is only awardable on active service.

* These words were inserted by the Indian Army (Amendment) Act, 1920

CHAPTER V.

OFFENCES.

Offences in respect of Military Service.

25. Any person subject to this Act who commits any of the following offences, that is to say —

Offence punishable with death.

- (a) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend; or
- (b) in presence of any enemy, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice; or
- (c) directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer, or
- (d) treacherously makes known the watchword to any person not entitled to receive it, or
- (e) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State, or
- (f) in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency, or
- (g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard sleeps upon his post, or quits it without being regularly relieved or without leave, or
- (h) in time of action, leaves his commanding officer or his post or party to go in search of plunder, or
- (i) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave, or
- (j) in time of war or during any military operation, uses criminal force to or commits an assault on, any person bringing provisions or other necessities to the camp or quarters of any of His Majesty's forces, or forces a safeguard, or breaks

into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind,* [or

- (h) on active service commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving.]

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

NOTE.

Subject to this Act.—See Part I, Chapter I, paragraphs 9 and 10 for an enumeration of persons so subject

(a) *Shamefully abandons, etc.*—This offence can only be committed by the person in charge of the garrison, post, etc., and not by the subordinates under his command. The surrender of a place by an officer charged with its defence can only be justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place, with its garrison, their arms and magazines, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore a crime under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in clauses (g) and (h) where it has reference to an individual.

Particulars of a charge under this clause must detail some circumstances which make the abandonment in a military sense shameful.

(b) *Enemy*.—See section 7 (12). The term includes any person in arms against whom it is the duty of a person subject to military law to act. A soldier, therefore, who, when a comrade "runs amok," shows cowardice by refraining from acting against him, is liable to trial under this clause.

Shamefully casts away.—The particulars of the charge must show the circumstances which make the act in a military sense shameful. The word "shamefully" is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

Intentionally.—The court may infer intention from the circumstances proved in evidence. A court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of events and human conduct. See Part I, Chapter V, paragraph 84.

Person subject to military law.—This includes a person subject to the Army Act.

Misbehaves.—This means that the accused, from an unsoldierlike regard for his personal safety, in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time.

(c) *Directly or indirectly*.—Correspondence with, or communication of intelligence to, the enemy is therefore an offence even when the correspondence or communication is indirect. The terms of the clause thus include any unauthorized communication of intelligence by indirect methods, such as sending letters in friends or to the press.

(d) *Watchword* includes parole, countersign and password.

The particulars of the charge must show the circumstances which indicate treachery. See note to clause (b) as to the inference which courts are entitled to draw from facts proved in evidence.

(e) *Knowingly*.—Friedenreich should, if possible, be given that the accused knew the person harboured or protected to be an enemy or a person in arms against the State; but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances. See note to clause (b) above.

(g) The same offence when committed by a sentry in circumstances which do not fall under this clause, is triable under clause (d) of section 25. A sentry's "post" means the spot where he is left to the

observance of his duties by the officer or non-commissioned officer posting him, or any limits specially pointed out as his walk. It is, however, not necessary that he should be regularly posted, and he will be liable if, being one of a guard or body turnishing the sentry for the post, he has undertaken the duty of sentry.

(h) *Post* when used with respect to an individual, as in this clause and clause (g) above, means the position or place in which it may be the duty of a person to be, especially when under arms. In determining what, in any particular case is a post, the court will use their military knowledge (section 83). The place in which the person was posted is material and should be stated in the charge.

(i) The words "without being regularly relieved or without leave" are of the nature of an exception, and the principle laid down in section 105 of the Indian Evidence Act (see Chapter V, paragraph 83) applies. Therefore, though the charge must aver the absence of regular relief or leave, this need not be proved, and the fact of the accused person having quitted his guard, etc., being established, it will be for him to show that he was regularly relieved or had leave to do so, nevertheless, any evidence bearing on this point which is known to the prosecutor should be adduced.

(j) For definitions of criminal force and assault see Part IV and note to section 27 (d) below.

Safeguard—A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, house, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house, cellar or other property under his especial care as to force the whole party.

*The word "or" and clause (k) were added by the Indian Army (Amendment) Act, 1918. This clause is applicable only if the offence was committed on active service. Similar offences committed outside British India (see notes to section 41) and not on active service should be charged under section 41. In British India except on active service such offences will ordinarily be dealt with by the civil power as they can only rarely fall under any section of the Act.

26. Any person subject to this Act who commits any of the following offences, that is to say — Offences not punishable with death.

- (a) strikes, or forces or attempts to force, any sentry; or
- (b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment; or
- (c) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard; or
- (d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(b) *Intentionally*.—See note to clause (b) of section 25 above.

Cantonment.—See note to clause (i) and (j) of Section 39 below.

(d) *Post*.—See notes to clauses (g) and (h) of section 25 above.

Mutiny and Insubordination.

27. Any person subject to this Act who commits any of the following offences, that is to say — Offences not punishable with death.

- (a) begins, excites, causes * [or conspires with any other persons to cause] or joins in any mutiny; or
- (b) being present at any mutiny, does not use his utmost endeavours to suppress the same; or

Religious scruples, however bona fide they may be, afford no justification for disobedience of commands which are clearly lawful as defined above.

28. Any person subject to this Act who commits any of the following offences, that is to say:—

Offences not punishable with death

- (a) is grossly insubordinate or insolent to his superior officer in the execution of his office; or
- (b) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field; or
- (c) impedes a provost-marshal or an assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person,

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

(a) *Superior officer*—See section 7 (7). The court will use their military knowledge (section 89) in deciding whether the superior officer was, or was not, in the execution of his office.

The charge should specify the conduct or language alleged to be insubordinate.

As to insubordinate language, used by an intoxicated man as a result of being confined, see note to section 32.

(c) *Provost-marshal*—See sections 23 and 24.

The court may exercise their military knowledge as to whether a person was a provost-marshal, assistant provost-marshal or a person legally exercising authority under, or on behalf of, the provost-marshal, but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost-marshal or assistant provost-marshal, or was not legally exercising the above mentioned authority.

Desertion, Fraudulent Enrolment and Absence without Leave.

29. Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Desertion.

NOTE.

Desertion must be distinguished from absence without leave, as to which see section 30 (d).

The difference lies in the intention of the offender, in the latter case he intends to return, in the former he ordinarily intends never to return. He may, however, be guilty of desertion even when he intends to return if, by absenting himself, he intended to avoid some important military service. A man may be a deserter although he re-enrols himself, and although, in the first instance, his absence was authorised. The intention of the offender must be inferred from the surrounding facts and the circumstances of the case. See note to clause (b) of section 25 above.

To establish an "attempt to desert" there must be proved some act which if completed would constitute desertion. Mere preparations to desert would not, if unaccompanied by any such act, constitute an offence under this section.

As to forfeiture of service for pension or gratuity, which follows upon desertion, and regulations as to restoration of service so forfeited, see P & A. Regulations, Part II. The period between desertion and apprehension

does not, under the prescribed conditions of enrolment (see first appendix to the rules), reckon as service towards discharge. Service rendered *previous to desertion*, though forfeited for purposes of pension or gratuity, reckons as service towards discharge.

As to a man who absents himself from his corps or department and enlists again, see section 30 (c) and notes thereto.

See also, as to deserters, sections 114, 123 and 126.

Harbouring
deserter
absence with-
out leave
etc.,

30. Any person subject to this Act who commits any of the following offences, that is to say —

- (a) knowingly harbours any deserter, or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not without delay give information thereof to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended; or
- (b) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person; or
- (c) without having first obtained a regular discharge from the corps or department to which he belongs, enrolls himself in the same or any other corps or department; or
- (d) absents himself without leave, or without sufficient cause overstays leave granted to him; or
- (e) being on leave of absence and having received information from proper authority that any corps or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or
- (f) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or
- (g) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march; or
- (h) in time of peace, quits his guard, picquet or patrol without being regularly relieved or without leave; or
- (i) without proper authority is found two miles or upwards from camp; or
- (j) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat-beating;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(a) *Knowingly*—See note to clause (e) of section 25.

(c) A person who leaves one corps or department and enrolls himself in another does not *prima facie* commit the offence of deserting the service, though he irregularly and improperly exchanges one branch of that service for another. If, however, at the time of leaving his first corps or department he had no intention of re-enrolling himself, and only did so as an

afterthought, or if he absented himself to avoid a particular service, e.g., service abroad, his offence is desertion, though a conviction on a charge framed under this section would also be legal. In deciding under which section a charge should be framed, the time which elapsed between the two acts will be an important element for consideration. In doubtful cases the charge should be framed under section 29 (c).

If the offender is charged with desertion, he should be tried in his original corps or department. If he is charged with the offence specified in this clause he may be tried either in his original corps or department, or in that into which he has fraudulently enrolled himself, and if not dismissed by the court which tries him may be held to serve in either corps or department. As a rule he should be tried in that in which it is intended to retain him.

It will be noticed that the offence under this clause can be committed by a person who belongs to a corps or department and enrolls himself again in the same corps or department.

This provision is inserted to meet the case of the larger corps and departments (e.g., the Indian Army Service Corps) where a man might otherwise leave one portion of the corps or department and enrol himself in another with impunity.

As to forfeiture of service towards pension or gratuity on conviction for this offence, see P and A Regulations, Part II, where the conditions under which service so forfeited may be restored are also laid down.

(d) If it is proved that a person subject to military law has overstayed his leave, it will be for him to show that he had sufficient cause (e.g., sickness or the unexpected interruption of the ordinary means of transit) for doing so. If, however, any evidence as to the cause of his failure to return is known to the prosecutor, it should be adduced, leaving it to the court to decide as to the sufficiency of such cause.

(e), (f), (g) *Sufficient cause*—See note to clause (d) above.

(f) A man who is late for parade commits an offence under this clause, equally with one who is altogether absent.

(h) See notes to section 25 (i).

(i)–(j) *Without proper authority*—These words are the nature of an exception, and on it being proved that the accused was found beyond fixed limits or absent after fixed hours, it will rest on him to show that he had the proper authority,—see note to clause (i) of section 25 above.

"Cantonment" here and elsewhere in the Indian Army Act is not to be taken to mean "cantonments" as such, but to mean the place where the troops are stationed, whether they are permanent, or not.

"Camp" includes a bivouac, and any quarters, shelter, or other place where troops are temporarily lodged.

Disgraceful Conduct

31. Any person subject to this Act who commits any of the following offences, that is to say — Disgraceful conduct.

- (a) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of Government, entrusted to him, or
- (b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted, or
- (c) wilfully destroys or injures any property of Government entrusted to him, or
- (d) commits theft in respect of any property of Government, or of any military mess, band or institution, or of any person subject to military law, or serving with, or attached to, the army; or

- (e) dishonestly receives or retains any such property as is specified in clause (d) knowing or having reason to believe it to be stolen; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, or
- (g) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity, or
- (h) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person, or
- (i) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

NOTE.

(a)–(e) All these offences are also punishable under the ordinary law of British India. When committed against the property of persons or institutions other than those here provided for, the offenders must be dealt with by the civil power except in the case of offences committed on active service or outside of British India. See note to Rule 15.

It will be noticed that the dishonest misappropriation or conversion of the property of a military mess, band or institution, or of any of the individuals mentioned in clause (d), does not fall within the terms of clause (e) which alone deals with dishonest misappropriation or conversion. The dishonest misappropriation or conversion of such property, as distinct from its theft, must therefore be dealt with either as a civil offence, or under section 31 (f) or 33 (f).

For definitions of the terms used in these clauses, see Part IV of this Manual.

See section 86 (3) and notes thereto as to special findings admissible on charges under this section.

(a) If no evidence is forthcoming as to the particular mode of misappropriation, the court may, in the absence of explanation from the accused, infer that the property was misappropriated from the fact of its not having been properly utilized or accounted for.

Each instance of misappropriation should be in a separate charge.

A mere receipt of money or other property by a person, without any intention of converting it to his own use, is not a misappropriation. The receipt of money or other property by a person, without any intention of converting it to his own use, is not a misappropriation. The receipt of money or other property by a person, without any intention of converting it to his own use, is not a misappropriation.

The value of the property alleged to have been misappropriated should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may add an award of stoppages to his sentence.

(d) Theft from a person subject to the (British) Army Act falls under this clause.

If the stolen property has been recovered it should be produced in court and identified by its owner and by any other witnesses who mention it to their evidence. If it has not been recovered its value or approximate value should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may add an award of stoppages to his sentence.

(f) *Intent to defraud*—These words imply (1) deceit or an intention to deceive or in some cases mere secrecy, and (2) either actual or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent to injure will be the only or the principal intention entertained by the fraudulent person whose principal object is in nearly every case his own

advantage. The 'injurious deception' is usually intended only as a means to an end, though this does not prevent its being intentional. Both the first and second ingredients mentioned above must be present to constitute an intent to defraud.

Wrongful loss or wrongful gain.—See section 23 of the Indian Penal Code in Part IV of this Manual.

(g) The particulars of the charge should show in what way the accused has mangled or delayed his cure or what disease he has produced or aggravated. The involuntary production of *delirium tremens* by imtemperate habits or venereal disease by immoral conduct does not fall within the terms of this clause. It is concealment of venereal disease see note to section 23 (h).

Feigning.—This term means not merely that a person reported himself sick when he was not sick, but that he reported himself sick when he knew that he was not sick, and that he feigned or pretended certain symptoms which the medical officer was satisfied did not exist.

To mangle is to pretend illness or to produce or protract disease, in order to escape duty.

(h) In a charge under this clause 'intent' is of the essence of the offence, but if the act is shown to have been done wilfully and not accidentally, the intent may be inferred from the act and the surrounding circumstances. The intent may be inferred from the act and the surrounding circumstances. The intent may be inferred from the act and the surrounding circumstances. The intent may be inferred from the act and the surrounding circumstances.

Does any act towards its commission.—See note to section 33 A.

Intoxication.

32. Any person subject to this Act who is in a state of Intoxication, intoxication, whether on duty or not on duty, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

Intoxication may be induced by opium or any similar drug, as well as by liquor. This section creates only one single offence, viz., intoxication, and in all cases whether the person is on duty or not on duty, the charge is the same. The offence is committed on duty, or at any time, that the offence is specified in the statement from a military point of view, or is materially affected by the circumstance.

Nothing can justify a person subject to military law who uses or attempts to use criminal force to his superior, and great care must therefore be taken to avoid bringing intoxicated persons into contact with their superiors.

More abusive and violent language used by an intoxicated man, as the result of being taken into custody, should not be used as the ground for framing a charge under section 28 (a). If a court-martial is considered necessary, the charge should be framed for intoxication, the language being treated as in the nature of riotous conduct only, and to that extent aggravating the offence.

Offences in relation to Persons in Custody.

33. Any person subject to this Act who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape, shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Without proper authority.—See note to section 30, clauses (i), (j). The court will use their military knowledge (section 29) with respect to any authority alleged by accused to exist was or was not sufficient.

Offences punishable with death.

Negligently.—Negligence has been defined by high judicial authorities¹ as "the omission to do something which a reasonable man guided upon the conduct of human affairs, a prudent and reasonable man would do, a person of ordinary care and

As to other prisoners and persons in custody, see section 34 (b)

Offences not
punishable
with death.

34. Any person subject to this Act who commits any of the following offences, that is to say —

- (a) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge; or
- (b) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape, or
- (c) being in military custody, leaves such custody before he is set at liberty by proper authority;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

(b) See notes to section 33.

(c) Military custody—See section 7 (14)

Offences in relation to Property.

Offences in
relation to
property.

35. Any person subject to this Act who commits any of the following offences, that is to say:—

- (a) commits extortion, or without proper authority exacts from any person carriage, portage or provisions; or
- (b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property; or
- (c) designedly or through neglect kills, injures, make away with, ill-treats or loses his horse or any animal used in the public service; or
- (d) makes away with, or is concerned in making away with, his arms, ammunition, equipments, instruments, tools, clothing or regimental necessities; or
- (e) loses by neglect anything mentioned in clause (d); or
- (f) wilfully injures anything mentioned in clause (d) or any property belonging to Government, or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to, the army; or
- (g) sells, pawns, destroys or defaces any medal or decoration granted to him;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

¹ Per Baron Alderson *Blyth v. Birmingham Waterworks* (1856) The second quotation is from the report of *Bridges v. North London Railway* (1874), L. R. 7 H. L., p. 128

NOTE.

(a) *Extortion*—See Indian Penal Code, section 383 in Part IV.

Without proper authority—See first note to section 33.

(b) *Housebreaking*—See Indian Penal Code, section 45 in Part IV.

Other property—This must be *ejusdem generis*, i.e., of the same kind, as a *frill* or *garb*—i.e. to plundering in time of war, see section 25 (j).

(d) *Making away with* is distinct from theft, as it applies only to goods in a man's own possession and which, therefore, he cannot in law steal. Unless there is some positive act, such as pawning, selling or destruction, a charge for making away with should not be preferred one for 'losing' under clause (e) being substituted.

(d) and (e) *His* This word is to be noted. The articles in respect of which a charge under either of these clauses is laid must be part of the accused's own kit that he is bound to maintain or of his general military equipment whether supplied by Government or by an officially recognised fund (such as a *band fund* in a unit that maintains a band under the authority of army regulations), or must be articles, the property of Government, in his charge and supplied to him for his personal use or issued to him personally for his use with the animal or vehicle in his charge.

(e) This is not intended to punish a man for deficiency in his kit occasioned by accident or mere carelessness rather than by culpable neglect. On the other hand, the fact that a man has not got his arms, etc., at a time when it was his duty to have them, is *prima facie* evidence of his having lost them by neglect, and the court may call on him to show that the loss was not occasioned by any fault on his part. The prosecutor should invariably call evidence to show that the articles said to be lost were in the possession of accused on a date previous to that mentioned in the charge.

(f) In charges under this clause the prosecutor must adduce evidence which will prove, or enable the court to infer, that the injury was not accidental. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the arms, etc., or was mere carelessness. In the latter case no offence under this clause will have been committed.

Offences in relation to False Documents and Statements.

36. Any person subject to this Act who commits any of the following offences, that is to say:—

False accusations and offences in relation to documents.

(a) makes a false accusation against any person subject to military law, knowing such accusation to be false; or

(b) in making any complaint under section 117, knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact; or

(c) obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement; or

(d) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to Government or to any person in or attached to the army, or who, through design or culpable

neglect, omits or refuses to make or send any return or report of the matters aforesaid; shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

(a) A mere false statement, not involving an accusation, is not within this clause

False answers
on enrolment.

37. Any person having become subject to this Act who is discovered to have made a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE.

For use of the enrolment document as evidence of answers made on enrolment see section 91 and notes thereto.

Offences in relation to Courts-martial.

Offences in
relation to
courts-martial.

38. Any person subject to this Act who commits any of the following offences, that is to say:—

- (a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up; or
- (b) intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-martial while sitting; or
- (c) having been duly sworn or affirmed before any court-martial or other military court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

NOTE

There is in this Act, no restriction, similar to that in the (British) Act specified in the section reported by the members sitting at the commanding in a grave this section or trial See Army Act in this section (British) Army Act a court is

not a "court martial" for the purposes of this Act. See section 7 (16). The terms of clause (c) are, however, wide enough to cover the giving of false evidence before an Army Act court, or before a court of inquiry sitting under either Act if such court has been empowered to administer an oath or affirmation. If the evidence at the court of inquiry was not given on oath, the charge should be framed under section 39 (4).

See Rule 136 and notes thereto, for manner of dealing with similar offences when committed by civilians or by persons subject to the Army Act.

A court martial begins to sit from the time the members take their seats for the purposes of trial, even before they are sworn, and anything which would be a contempt after the court was sworn, would be a contempt once the members have so taken their seats.

Miscellaneous Military Offences.

39. Any person subject to this Act who commits any of the following offences, that is to say — Miscellaneous military offences.

- (a) being an officer or warrant officer, behaves in a manner unbecoming his position and character; or
- (b) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position, or
- (c) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority, or
- (d) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person, or
- (e) attempts to commit suicide and does any act towards the commission of such offence, or
- (f) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazaar, carrying a sword, bludgeon or other offensive weapon, or
- (g) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service, or
- (h) neglects to obey any general or garrison or other orders, or
- (i) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

NOTE.

(a) This clause should not be resorted to where the offence is one specifically provided for elsewhere. In charges under this clause and clause (f) the court will use their military knowledge (section 83) as to whether the act charged is unbecoming the position and character of an officer or warrant officer, or prejudicial to good order and military discipline. The mere description of an act or omission by one of these terms does not make it either "unbecoming" or "prejudicial" and a court-martial ought not to convict unless convinced that the conduct charged (1) was committed by the accused and (2) was, having regard to the conduct itself and the circumstances in which it took place, unbecoming to the position and character of the person charged, or prejudicial to good order and military discipline, as the case may be.

(d) *Intentionally*—Intention may be inferred from the circumstances and a person is presumed to intend the natural consequence of his action.

(f) *Without proper authority*—See notes to section 30 (4), (5)

(g) *Gratification*—This term is not restricted to a pecuniary gratification or a gratification estimable in money. The offence is complete if the gratification is given with the intention indicated and it is not necessary that the enrolment or other object should be actually procured. An attempt to obtain a gratification (e.g., by asking for it) is punishable equally with the actual receipt of one. An attempt to give a gratification (e.g., an offer or a bribe) is an abetment of the offence by way of instigation and is punishable under section 49.

(h) The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental, or of a like nature. Disobedience of a specific order in the nature of a command should be dealt with under section 27 (c) and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under clause (i) of this section. Ignorance of the order is not an exculpation if the order is one which the accused ought in the ordinary

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Concealment of venereal disease is to be dealt with under this clause. See R. A. I., para 217.

(i) To sustain a charge under this clause, it is, except as mentioned below in the charge, absolutely necessary that the charge be charged as to say, there must be charged, "prejudicial to the proceedings of a summary court-martial, or otherwise, as the case may be, as are not affected, not to be set aside on merely technical grounds (see section 102), an officer reviewing the proceedings of such a court may, subject to the following conditions, pass a trial, although the charge is technically bad owing to its failure to recite the words of the Act. The merits of the case will not, as a rule, be affected by such a charge if the following conditions are present:—

- (1) The charge, either by marginal note or by wording, must show that the officer holding the trial did not totally disregard or lose sight of the law, but intended to lay the charge (however badly worded) under section 39 (i).
- (2) The particulars of the charge must specify an act or omission which is beyond argument prejudicial to good order and military discipline as known to accused and to every military man.
- (3) The accused must not have been prejudiced by the faulty charge.

For additional remarks on this clause see notes to clause (a) of this section.

*Attempts.**Attempts.*

*39A. Whoever attempts to commit an offence punishable by this Act or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, where no express provision is made by

[this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.]

NOTE.

* This section was inserted by the Indian Army (Amendment) Act, 1918. Attempts to commit the offences specified in the foregoing sections 35 to 39 are except where such attempts are specifically provided for (e.g., an attempt to desert), triable under this section. Attempts to commit civil offences are not triable under this section, but, if cognisable by a court-martial, are triable under either section 41 or section 42 according to circumstances.

Acts towards the commission of the offence.—There is a difference between the preparation antecedent to an offence and the actual attempt. To constitute an attempt to commit an offence there must be an intent to commit the offence, a commencement of the commission and an act done towards the commission.

Abetment.

40. Every person subject to this Act who abets any offence punishable under this Act may be punished with the punishment provided in this Act for such offence.

NOTE.

For definition of "abetment" see Indian Penal Code, section 107, in Part I.

A person subject to the Indian Army Act who abets a person subject to the Army Act (British) in doing a thing which would have been an offence under the former Act, had the person doing it been subject thereto, is not punishable under this section. Such cases will, however, generally fall within the terms of section 39 (c).

Civil Offences.

41. Every person subject to this Act who at any place beyond British India, or when on active service in British India, commits any civil offence shall be deemed to be guilty of an offence against military law, and if charged therewith under this section, shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say—

Civil offences committed outside British India or on active service in British India.

(a) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment * [other than whipping] assigned for the offence by the law of British India, and

(b) in other cases, he shall be liable to suffer any punishment * [other than whipping] assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline.

NOTE.

* These words were inserted by the Indian Army (Amendment) Act 1920. This section provides for the trial by court-martial of all civil offences when committed outside of British India or on active service in British India.

Civil offences committed in British India are only triable, as such by court-martial—

(i) when committed on active service (as above); or

(ii) if they fall within the terms of section 42.

All other civil offences committed in British India should be disposed of as directed in the note to Rule 12.

NOTE.

(a) This clause should not be resorted to where the offence is one specifically provided for elsewhere. In charges under this clause and clause (i) the court will use their military knowledge (section 83) as to whether the act charged is unbecoming the position and character of an officer or warrant officer, or prejudicial to good order and military discipline. The mere description of an act or omission by one of these terms does not make it either "unbecoming" or "prejudicial" and a court-martial ought not to convict unless convinced that the conduct charged (1) was committed by the accused and (2) was, having regard to the conduct itself and the circumstances in which it took place, unbecoming to the position and character of the person charged, or prejudicial to good order and military discipline, as the case may be.

(d) *Intentionally*.—Intention may be inferred from the circumstances and a person is presumed to intend the natural consequence of his action.

(f) *Without proper authority*.—See notes to section 30 (i), (j).

(g) *Gratification*.—This term is not restricted to a pecuniary gratification or a gratification complete if the gratification is not necessary that secured. An attempt to obtain gratification equally with the action (e.g., an offer of gratification and is punishable.

(h) The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental, or of a like nature. Disobedience of a specific order in the nature of a command should be dealt with under section 27 (e) and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under clause (s) of this section. Ignorance of the order is not a defence in the ordinary case. If the order is not known to the accused, the court will not find him guilty. A written regulation of a regulation in India, may be published in the official gazette, or in a regimental order.

Concomitant of venereal disease is to be dealt with under this clause See R. A. I., para 217.

(i) To sustain a charge under this clause, it is, except as mentioned below in the case of a summary court-martial, absolutely necessary that the charge should recite the words of the Act. That is to say, there must be charged an "act" or "omission" as the case may be, "prejudicial to good order and military discipline." Since, however, the proceedings of a summary court-martial are, if the merits of the case are not affected, not to be set aside on merely technical grounds (see section 102), an officer reviewing the proceedings of such a court may, subject to the following conditions, pass a trial, although the charge is technically bad owing to its failure to recite the words of the Act. The merits of the case will not, as a rule, be affected by such a charge if the following conditions are present:—

- (1) The charge, either by marginal note or by wording, must show that the officer holding the trial did not totally disregard or lose sight of the law, but intended to lay the charge (however badly worded) under section 39 (i).
- (2) The particulars of the charge must specify an act or omission which is beyond argument prejudicial to good order and military discipline as known to accused and to every military man.
- (3) The accused must not have been prejudiced by the faulty charge.

For additional remarks on this clause see notes to clause (a) of this section.

Attempts.

Attempts.

*[39A. Whoever attempts to commit an offence punishable by this Act or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, where no express provision is made by

[this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.]

NOTE.

* This section was inserted by the Indian Army (Amendment) Act, 1912. Attempts to commit the offences specified in the foregoing sections 23 to 29 are except where such attempts are specifically provided for (e.g., an attempt to commit trial) under this section. Attempts to commit civil offences are not triable under this section, but, if cognisable by a court-martial, are triable under either section 41 or section 42 according to circumstances.

Acts towards the commission of the offence.—There is a difference between the preparation antecedent to an offence and the actual attempt. To constitute an attempt to commit an offence there must be an intent to commit the offence, a commencement of the commission and an act done towards the commission.

Abetment.

40. Every person subject to this Act who abets any offence punishable under this Act may be punished with the punishment provided in this Act for such offence. Abetment.

NOTE.

For definition of "abetment" see Indian Penal Code, section 107, in Part IV.

A person subject to the Indian Army Act who abets a person subject to the Army Act (British) in doing a thing which would have been an offence under the former Act, had the person doing it been subject thereto, is not punishable under this section. Such cases will, however, generally fall within the terms of section 39 (i).

Civil Offences.

41. Every person subject to this Act who at any place beyond British India, or when on active service in British India, commits any civil offence shall be deemed to be guilty of an offence against military law, and, if charged therewith under this section, shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say —

Civil offences committed outside British India or on active service in British India.

(a) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment "[other than whipping] assigned for the offence by the law of British India; and

(b) in other cases, he shall be liable to suffer any punishment "[other than whipping] assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline.

NOTE.

* These words were inserted by the Indian Army (Amendment) Act 1920. This section provides for the trial by court-martial of all civil offences when committed outside of British India or on active service in British India.

Civil offences committed in British India are only triable, as such by court-martial—

(i) when committed on active service (as above); or

(ii) if they fall within the terms of section 42.

All other civil offences committed in British India should be disposed of as directed in the note to Rule 13.

The term "British India," when used in any Act of the Indian Legislature passed after 11th March 1857, means—

"All territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India." (*General Clauses Act, 1857, section 3*)

The following table, which is not exhaustive, will be a useful guide in determining whether any place is within or beyond British India. It is based on a series of decisions given in particular cases:—

Places in British India.	Places out of British India.
Kohima.	Tochi *
Haka.	Mhow
Fort Sredman.	Neemuch
Keng Tung	Haroda Cantt.
Nasrabad (Rajputana)	Sotna.
Ahmedabad.	Secunderabad.
Satara.	Angalore.
Thal Chotiali.	Boji
Harara.*	Kurram *

* Along the North West Frontier Province the boundary of British India is the line known as the Administrative Border, which corresponds to the district boundaries shown on the maps. Beyond this line and up to the Durand line the terrain is in India but not in British India. The following places, close to the administrative border, are situated as shown:—

Places in British India.	Places out of British India.
Bahadur Khel (Kohat District).	Ahmedwal.
Bannu.	Ali Masjid.
Bozdar.	Ahsai (Kurram).
Chaman.	Arawali (Kurram).
Cherat.	Ashgara.
Dera Ismail Khan.	Baler
Drabon.	Chakdara.
Fort Lockhart.	Chappri (Kurram).
Gulistan.	Chitral.
Itanag.	Datbandin.
Harnal.	Dandil.
Kalabagh.	Dargai.
Khirgi.	Domandi.
Kohat.	Drosh.
Lakki Marwat.	Fort Sandeman.
Manzal (Dera Ismail Khan District).	Ghuriamma (Waziristan)
Mardan.	Hundubag
Mari Indus.	Idak.
Nowshera.	Jamrud.
Peshawar.	Jandola.
Pishin.	Kapip.
Rasipur.	Kila Saifulla.
Sangar.	Lakaband.
Shelabagh.	Landi Khana.
Tank.	Landi Kotah.
Thal.	Loralal.
Ter Khan	Malakand.
	Manikbwa.
	Nara Tangi.
	Nasung.
	Mir Ali Khel.
	Miranshah.
	Moghni Kot.
	Murcha.
	Nahki.
	Parachinar.
	Quetta.
	Razani.
	Rarmak.
	Saidgi.
	Sarwakal.
	Shagal.
	Shewa.
	Shinghar.
	Sinjawi.
	Tal in Trech.
	Zara.
	Zarwal.

Places in British India.	Places out of British India.
Burma.	Administered areas of the Baluchistan Agency. ¹
Aden.	Po'sarum.
British Baluchistan &	Aurangabad.
Perim.	Sikhim.
	Kashmir.
	Nebofo.

¹ British Baluchistan is in British India, but leased territories such as Quetta, Nushki and Naristan (Baluchistan) and the remainder of Baluchistan are in India only, not in British India.

A tabular statement of civil offences with the penalties assigned to them by the law of British India will be found in Part I.

For offences falling under clause (a) of this section, except only those offences for which an obligatory punishment is provided under the law of British India (e.g., death or transportation for life for murder), a court-martial is, save as provided in sections 45 and 47 of the Act, restricted to punishments awardable under the ordinary law of British India, that is, it may award—

- (i) the punishment other than whipping assigned to the offence by the ordinary law of British India; or
- (ii) if the offender is under the rank of warrant officer and the offence was committed on active service field punishment up to three months;

and may, either in lieu of or in addition to either of the above, award one or more of the punishments specified in section 47 of the Act.

For offences falling under clause (b) courts-martial may award—

- (i) the punishment other than whipping assigned to the offence by the ordinary law of British India, or
- (ii) imprisonment or such less punishment as is in this Act mentioned (section 33 (1)), or
- (iii) if the offender is under the rank of warrant officer and the offence was committed on active service field punishment up to three months.

and may, either in lieu of or in addition to any of the above, award one or more of the punishments specified in section 47 of the Act.

Fines are awardable (as penalties authorised by the ordinary law) under both clauses of this section.

42. Every person subject to this Act who commits or attempts to commit or abets the commission of an offence punishable under Chapter VI of the Indian Penal Code, or any of the following offences, against any person subject to military law, that is to say, murder, culpable homicide or any offence punishable under any of the sections 323 to 337 (both inclusive) or section 506 of the said Code, shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence, shall subject to the provisions of this Act, be liable to be tried by court-martial and on conviction shall be liable to suffer any punishment assigned for the offence by the said Code.

Certain civil offences triable by military law.

LIV of 1860.

Notes

For offences under this section, except only those offences for which an obligatory punishment is provided under the Indian Penal Code, a court-martial is, save as provided in sections 45 and 47 of the Act, restricted to

punishments awardable under the Indian Penal Code. As to offences triable under this section see Part I, Chapter VI, and the Indian Penal Code in Part IV.

CHAPTER VI.

PUNISHMENTS.

Punishments.

43. Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say:—

- (a) death;
- (b) transportation for life or for any period not less than seven years;
- (c) imprisonment *[either rigorous or simple] for any term not exceeding fourteen years;
- (d) dismissal from the service;
- (e) in the case of officers and warrant officers, suspension from rank, pay and allowances for *[a period not exceeding two months;]
- (f) reduction, in the case of a warrant officer, to a lower grade or class (if any) of warrant officer, or in the case of a non-commissioned officer, to a lower grade or to the ranks;
- (g) in the case of officers, warrant officers and non-commissioned officers, forfeiture of seniority of rank;

*[(gg) in the case of officers, reprimand or severe reprimand;]

(h) forfeitures and stoppages as follows, namely:—

- (i) forfeiture of service for the purpose of promotion, increased pay, pension or any other prescribed purpose;
- (ii) forfeiture of any military decoration or military reward;
- (iii) forfeiture, in the case of a person sentenced to dismissal from the service *[“ ”] of all arrears of pay and allowances and other public money due to him at the time of such dismissal;
- (iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good;

*[(v) on active service forfeiture of pay and allowances for a period not exceeding three months.]

NOTE

(a) See section 101. The words of the latter section should be strictly adhered to by courts-martial when passing sentence of death.

(c) These words were substituted for the words and brackets “(with or without solitary confinement)” by the Indian Army (Amendment) Act, 1918. Imprisonment is either (1) rigorous, that is, with hard labour; or (2) simple. These terms “rigorous” and “simple” should invariably be used in

Field
punishment.

*[45. Where any person, subject to this Act and under the rank of warrant officer, on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence any such punishment, other than flogging, as may be prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb.]

NOTE.

* This section was inserted by the Indian Army (Amendment) Act, 1920. For the prescribed form of field punishment see Rule 153

Position of field
punishment in
scale.

46. *[Field] punishment shall, for the purpose of commutation, be deemed to stand in the scale of punishments next below dismissal.

NOTE

Field punishment can, therefore, be commuted to reduction or to any punishment lower than reduction in the scale contained in section 43. Only sentences of death, transportation, imprisonment or dismissal can be commuted to field punishment, and then only if the offender is under the rank of warrant officer and the offence is committed on active service.

* The word "field" was substituted for "corporal" by the Indian Army (Amendment) Act, 1920.

Combination of
punishments.

47. A sentence of a court-martial may award, in addition to or without any one other punishment, any one or more of the punishments specified in clauses (d), (f), *[gg] and (h) of section 43.

For example the following combined sentences are legal—

- (i) forfeiture of seniority of rank, severe reprimand, forfeiture and stoppage in the case of an officer;
- (ii) imprisonment, dismissal, reduction (n. c. o.), forfeitures and stoppages;
- (iii) field punishment, dismissal, reduction (n. c. o.), forfeitures and stoppages

A sentence of imprisonment combined with field punishment is illegal.

It has been decided that this section is of general application, and that the punishments specified therein are awardable for civil offences tried under sections 41 and 42 of the Act. These punishments may be awarded either in lieu of, or in addition to, those assigned by the ordinary law (section 41) or the Indian Penal Code (section 42) to the offence of which the accused has been convicted. See, however, the notes to these sections as to obligatory punishments for offences tried under clause (a) of section 41 or under section 42.

* The brackets and letters (gg) were inserted by the Indian Army (Amendment) Act, 1912.

Solitary con-
finement.

48. Whenever any person is sentenced to rigorous imprisonment, the court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say,—

- (a) a time not exceeding one month if the term of imprisonment does not exceed six months;
- (b) a time not exceeding two months if the term of imprisonment exceeds six months and does not exceed one year;
- (c) a time not exceeding three months if the term of imprisonment exceeds one year.

NOTE.

See section 113 for rules as to the execution of sentences of solitary confinement. Such sentences are, as a rule, undesirable unless the rigorous imprisonment is to be undergone in a civil jail.

49. A non-commissioned officer sentenced by court-martial to transportation, imprisonment, **[field]* punishment or dismissal from the service, shall be deemed to be reduced to the ranks Reduction of non-commissioned officers to ranks.

NOTE.

Nevertheless a court should, by its sentence, reduce a non-commissioned officer to the ranks when passing upon him any of the sentences here referred to. If, however, they omit to do so, this section will automatically effect his reduction.

* The word "*field*" was substituted for "*corporal*" by the Indian Army (Amendment) Act, 1920.

†[49A. When any person on active service has been sentenced by court-martial to dismissal or to transportation or imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and where such person has been sentenced to transportation or imprisonment, such service shall be reckoned as part of his term of transportation or imprisonment] Retention in the ranks of a person convicted on active service.

NOTE.

† This section was inserted by the Indian Army (Amendment) Act, 1918. The prescribed officer.—See Rule 162A.

Dismissal is not avoided but is merely suspended so long as the person is retained to serve in the ranks. If it is subsequently desired to retain the person altogether, the dismissal must be remitted.

A person can only be retained to serve in the ranks under this section while he is on active service. An order under this section must be made before the sentence or dismissal has taken effect. See Rule 154A.

CHAPTER VII.

PENAL DEDUCTIONS.

50. The following penal deductions may be made from the pay and allowances of a person subject to this Act, that is to say— Deductions from pay and allowances.

- (a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a criminal court, a court-martial, or an officer exercising authority under section 20 †[, or of field punishment awarded by a court-martial or such officer].
- (b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment †[or field punishment] by an officer exercising authority under section 20.
- (c) all pay and allowances for every day on which he is in hospital on account of sickness certified by

the *[*] medical officer attending on him
 [*] to have been caused by an offence
 under this Act committed by him;

- *[(cc) for every day on which he is in hospital on
 account of sickness certified by the medical officer
 attending on him to have been caused by his
 own misconduct or imprudence, such sum as may
 be specified by order of the Commander-in-Chief
 in India]
- (d) all pay and allowances ordered by a court-martial to
 be suspended or forfeited under section 43;
- (e) any sum ordered by a court-martial to be stopped
 under section 43;
- (f) any sum required to make good such compensation
 for any expenses caused by him, or for any loss
 of or damage or destruction done by him to any
 arms, ammunition, equipment, clothing, instru-
 ments, regimental necessaries or military decora-
 tion, or to any buildings or property, as may be
 awarded by his commanding officer;
- (g) any sum required to pay a fine awarded by a
 criminal court, a court-martial exercising
 jurisdiction under section 41 or section 42, or
 an officer exercising authority under section 20
 or section 21:

Provided that the total deductions from the pay and allow-
 ances of a person subject to this Act made under clauses (c)
 to (g), both inclusive, shall not (except in the case of a
 person sentenced to dismissal *[* * * *]), exceed in any
 one month one-half of his pay and allowances for that month.

Explanation—For the purposes of clauses (a) and (b)—

- (i) absence or custody for six consecutive hours or
 upwards, whether wholly in one day or partly
 in one day and partly in another; may be
 reckoned as absence or custody for a day;
- (ii) absence or custody for twelve consecutive hours or
 upwards may be reckoned as absence or custody
 for the whole of each day during any portion of
 which the person was absent or in custody; and
- (iii) any absence or custody for less than a day may be
 reckoned as absence or custody for a day if such
 absence or custody prevented the absentee from
 fulfilling any military duty which was thereby
 thrown upon some other person.

NOTE

This section shows what penal deductions may be made from the pay

For other deductions, see Royal Warrant, dated 22nd February 1902, which is prefixed to P. and A. Regulations, Part I.

(a) See note to section 52.

(b) Persons in military custody are submitted under regulations which will be found in P. and A. Regulations, Part II.

(c) and (d) These words were inserted by the Indian Army (Amendment) Act, 1920.

(e) * The words "proper" and "at the hospital" were repealed by the Indian Army (Amendment) Act, 1918.

(ee) * This clause was inserted by the Indian Army (Amendment) Act, 1918. The sum to be deducted is specified in P. and A. Regulations, Part I.

(e) See note to section 43 (b) regarding these stoppages. See also note to Rule 53 (A.)

(e) and (f) For the purposes of trial, the amount of compensation should be estimated as follows —

Where an article which has an official value has been lost or rendered unserviceable, a witness is required who would prove the present value of the article upon a basis of its age and by reference to the regulations for fixing the value of the article at that age. This value would be included in the particulars of the charge.

When the article has no official value expert evidence is required to prove the approximate value, which will be included in the particulars.

When an article has been damaged but not rendered unserviceable, expert evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused, if it cannot be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

Similar principles should be observed if the Commanding Officer deals with the case himself.

(g) The fines awardable as "minor punishments" under section 20 are specified in R. A. I. See also notes to section 20.

* The words "or whose sentence involves dismissal" were repealed by the Indian Army (Amendment) Act, 1918.

The following examples may help the reader to a clear understanding of what is meant by a "day of absence" in the explanation to this section.

If a person is absent from 9 P.M. on Monday until 4 A.M. on Tuesday, his absence counts as a day's absence, but no more, although the absence was partly on one day and partly on another. If, however, he had returned at 1 A.M., his absence could not count as a day's absence, unless meanwhile he was bound to go on guard or perform some other military duty, and in consequence of his absence some other person had to go on guard, or perform that duty.

If a person is absent from 6 P.M. on Monday until 6.5 A.M. on Tuesday, his absence is to be reckoned as two days' absence, and it is also to be reckoned if he returns at 4 A.M. on Tuesday, and at 2 A.M. some other person had to go on guard instead of him.

51. Any sum authorized by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

Deductions from public money other than pay.

52. Any deduction from pay and allowances authorized by this Act may be remitted in such manner "[and to such extent] and by such authority as may from time to time be prescribed.

Remission of deductions.

NOTE.

Prescribed—See Rule 163. The commonest case is that of a man absent without leave for a period not exceeding five days. In such a case, unless the man is convicted by a court-martial, his commanding officer may remit the forfeiture of pay and allowances which his absence entails. See section 50 (a).

And to such extent—The remission may be partial but there is nothing to prevent a further remission being made subsequently.

* These words were inserted by the Indian Army (Amendment) Act, 1917.

the "[*] medical officer attending on him
 "[* *] to have been caused by an offence
 under this Act committed by him;

- *[(cc) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Commander-in-Chief in India.]
- (d) all pay and allowances ordered by a court-martial to be suspended or forfeited under section 43;
- (e) any sum ordered by a court-martial to be stopped under section 43;
- (f) any sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, regimental necessities or military decoration, or to any buildings or property, as may be awarded by his commanding officer,
- (g) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 41 or section 42, or an officer exercising authority under section 20 or section 21: .

Provided that the total deductions from the pay and allowances of a person subject to this Act made under clauses (e) to (g), both inclusive, shall not (except in the case of a person sentenced to dismissal "[* * *]), exceed in any one month one-half of his pay and allowances for that month.

Explanation.—For the purposes of clauses (a) and (b)—

- (i) absence or custody for six consecutive hours or upwards, whether wholly in one day or partly in one day and partly in another; may be reckoned as absence or custody for a day;
- (ii) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody; and
- (iii) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

NOTE

This section shows what penal deductions may be made from the pay and allowances of a person subject to this Act made under clauses (e) to (g), both inclusive, shall not (except in the case of a person sentenced to dismissal "[* * *]), exceed in any one month one-half of his pay and allowances for that month.

and in the case of a person sentenced to dismissal "[* * *]), exceed in any one month one-half of his pay and allowances for that month.

that a reservist who fails to appear for training, etc., or takes his discharge between trainings, may legitimately be deprived of any arrears due to him.

the public service, is not available, in which case the court may consist of not less than five officers.

58. A district court-martial shall consist of not less than three officers.

59. Whenever a general court-martial is ordered to be composed of the smaller number of officers specified in section 57, the order convening the court shall state that the larger number of officers is not, due regard being had to the public service, available, and such statement shall be conclusive evidence of the fact so stated.

Composition of district court-martial
Convening order to state if larger number of officers is not available

NOTE.

Shall state—If no such statement appears in the convening order the trial will be invalid. No subsequent certificate will cure the defect.

60. The officers composing a general or district court-martial shall, at the discretion of the convening officer, but subject to the provisions of section 61, either be British or Indian officers, but shall not be partly British and partly Indian officers.

Composition of general or district courts-martial.

NOTE.

A convening order detailing, either by name or rank, officers who are, as a matter of fact, British or Indian officers is sufficient evidence of the manner in which the convening officer has exercised this discretion, even if no specific declaration that the court shall be constituted in a particular manner be inserted in that order.

61. (1) Any person subject to this Act who is under orders for trial by general or district court-martial may claim to be tried by British officers.

Claim to trial by British officers

(2) In all cases the right of making such a claim shall, before the court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf, and, when such a claim is made, the court shall be constituted accordingly.

NOTE.

(3) See note to Rule 16 (B)

62. The following authorities shall have power to convene a summary general court-martial, namely,—

Convening of summary general courts-martial

- (a) an officer empowered in this behalf by an order of the Governor General in Council or of the Commander-in-Chief in India;
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
- (c) an officer commanding any detached portion of His Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial

NOTE.

The following officers commanding in and out of India have been empowered by the Commander-in-Chief in India under clause (a)—

- 1 The Officer Commanding the British Forces in Iraq (I. A. O. No. 125 of 1924)
- 2 The Officer Commanding the Forces at Aden (I. A. O. 73 of 1927.)

Composition of
summary
general courts-
martial.

53. A summary general court-martial shall consist of not less than three officers.

NOTE

These may be either British or Indian officers, or partly British and partly Indian officers. See definition of the term "officer" in section 7 (5). A summary general court-martial consisting entirely of Indian officers must be attended (section 79) by a "superintending officer." See however, note to Rule 141 (b).

Summary
courts-martial

64. (1) A summary court-martial may be held—

- (a) by the commanding officer of any corps or department of His Majesty's Indian forces, or of any detachment of those forces,
- (b) by the commanding officer of any British corps or detachment to which details subject to this Act are attached

(2) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers who shall not, as such, be sworn or affirmed.

NOTE.

(1) For the history of this court, which is peculiar to the Indian Army, see Part I, Chapter II, paragraph 15, and for its powers and procedure, see Chapter IV, paragraph 1 *et seq*

Commanding Officer—A Commissary, Deputy Commissary, or Assistant Commissary, even when placed in charge of an enrolled establishment of the Indian Army Service Corps or Ordnance Department or a Senior Assistant Surgeon in charge of a Medical unit is not ordinarily a "Commanding Officer" as defined in section 7 (6). Ordinarily, he cannot, therefore, hold a summary court-martial. "India Office" "Commanding officer" and "Superintending officer" and

A Medical Officer commanding a hospital or other medical unit is the "Commanding Officer" of medical personnel under his command and is, for the time being, the "Commanding Officer" of a person subject to the Indian Army Act not belonging to the medical personnel who is a patient in, or is employed in, that hospital or medical unit and may either himself dispose of a charge against such persons or refer it for disposal, after the person has left the hospital or medical unit, to the officer commanding the corps, department or detachment to which such person belongs or is attached, but the medical officer in charge of a regimental medical establishment is not, unless that establishment is detached, the "Commanding Officer" of that establishment or of any person who is a patient in, or is employed in, the medical unit to which that establishment belongs.

See also Part I, Chapter IV, paragraph 2.

Detachment—Every separate body of persons subject to this Act or the Army Act which is not a corps or department is a "detachment of His Majesty's Indian Forces" or a "British detachment" as the case may be. The following are examples of such detachments:—

- (a) Any enrolled establishment of the Indian Army Service Corps that is not itself a corps.
- (b) The enrolled establishment of a station hospital.
- (c) The enrolled establishment of an Ordnance Depot.
- (d) A detached, or unattached, battery of British artillery.
- (e) Recruiting parties, including enrolled recruits accompanying them, under the orders of a recruiting officer.

(2) These officers [see section 7 (5)] may be either British or Indian officers. In practice they are generally Indian officers. An officer of the Imperial Service Troops (now Indian States Forces) is not as such eligible to attend a summary court-martial held for the trial of a person belonging to His Majesty's Indian Forces. If the commanding officer does not understand the language of accused it will be convenient to appoint one of the officers attending as interpreter if qualified. He can legally combine this duty with attendance at the court under this section.

65. (1) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved:

Provided that a general court-martial shall not be dissolved under the provisions of this sub-section unless it is reduced below five officers.

(2) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) Where a court-martial is dissolved under this section, the accused may be tried again.

Note.

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Jurisdiction of Courts-martial.

66. When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under section 20 or section 23, he shall not be liable to be tried again for the same offence by a court-martial or dealt with summarily in respect of it under either of the said sections.

*[67. No trial by court-martial of any person subject to this Act for any offence, other than an offence of mutiny, desertion or fraudulent enrolment, shall be commenced after the expiration of three years from the date of such offence and no such trial for an offence of desertion (other than desertion on active service) or of fraudulent enrolment shall be commenced if the person in question has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of His Majesty's regular forces.

Explanation.—For the purposes of this section, 'mutiny' means any of the offences specified in clauses (a), (b) and (c) of section 27.]

NOTE

* This section was substituted for the original section by the Indian Army (Amendment) Act of 1920

1 The effect of this section is that on the expiration of three years from the commission of an offence, the offender is free from being tried or punished under this Act for any offence except mauling, desertion, or fraudulent enrolment. Matiny may be tried at any time with regard to desertion and fraudulent enrolment, if it is provided that, in the case of one of the greatest of all military offences, desertion on active service, he is not to be tried for the offence if he has served continuously in an exemplary manner for three years in any portion of His Majesty's regular forces. For forfeiture of service in the case of desertion and fraudulent enrolment, see P and A Regulations, Part II, para 572.

2 in an exemplary manner. See R. A. I.

3 On active service. See 1 A A sec 7 (13).

68. Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

Adjustment of the jurisdiction of Courts-martial and Criminal Courts.

Order in case of concurrent jurisdiction.

69. When a criminal court and a court-martial have each in the discretion before which that authority court-martial, to be tried in military

custody.

NOTE

Prescribed military authority—This is, except in cases under section 41 or 42 where death has resulted, the officer commanding the army, army corps, division, brigade or station in which the accused person is serving; in these excepted cases, it is the officer commanding the army, army corps, division or independent brigade in which he is serving. See Rule 164, also R. A. I., Appendix IX.

Power of criminal court to require delivery of offender.

70.

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Governor General in Council, whose order upon such reference shall be final.

NOTE

Prescribed military authority—See note to section 69

Trial by court-martial no bar to subsequent trial by criminal court.

71. (1) Notwithstanding anything contained in section 26 of the General Clauses Act, 1897, or in section 403 of the Code of Criminal Procedure, 1898, a person convicted or acquitted by a court-martial may be afterwards tried by a criminal court for the same offence or on the same facts.

(2) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a criminal court for the same offence or on the same facts, that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

NOTE

This section in effect declares that a person subject to military law is not to be exempted from the ordinary criminal law by reason of his military status, so that a person acquitted or convicted of an offence by a court-martial may still be tried by a criminal court on the same facts, if they constitute an offence under the criminal law of India. The effect of the two enactments quoted is—speaking generally—to make trial by a “court of competent jurisdiction” a bar to subsequent trial on the same facts. A court-martial is such a court and their operation has, therefore, been specifically excluded. Subsection (2), however, provides in favour of the person tried that a criminal court in awarding punishment for an offence shall have regard to any military punishment he may have undergone; while section 66 further declares that when he has been acquitted or convicted by a criminal court he shall not be tried by military law for the same offence. For definition of “criminal court” see section 7 (12).

Powers of courts-martial.

72. A general or summary general court-martial shall have power to try any person subject to this Act for any offence made punishable therein, and to pass any sentence authorized by this Act.

Powers of general and summary general courts-martial.

73. A district court-martial shall have power to try any person subject to this Act other than an officer for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death, or transportation, or imprisonment for a term exceeding two years.

Powers of district court-martial.

74. A summary court-martial may try any offence punishable under any of the provisions of this Act.

Offences triable by summary court-martial.

Provided that when there is no grave reason for immediate action, and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial [or on active service a summary general court-martial] for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any of the following offences, namely:—

- (a) any offence punishable under sections 25, 27, clauses (a), (b) or (c), 33, 41 or 42, or
- (b) any offence against the officer holding the court

NOTE

The discipline of the Indian Army depends in a great measure on the summary court-martial. When a soldier or other person amenable to the Act has committed an offence which is ordinarily triable by summary court-martial, a commanding officer, when determining by what court the accused is to be tried must bear in mind that the legislature, in conferring upon him the power of a summary court-martial, intends that he shall exercise those powers.

Though a summary court-martial may, subject to the proviso to this section, try any offence punishable under the Act, it is obvious that its jurisdiction is limited to the less grave offences known to the law, and that, therefore, notwithstanding the fact that it is vested in them, submit to its jurisdiction, it is not required to require more exemplary punishment than is warranted. It should, however, be remembered that the summary court-martial is a court of summary justice, and that its jurisdiction is limited to the less grave offences known to the law, and that, therefore, notwithstanding the fact that it is vested in them, submit to its jurisdiction, it is not required to require more exemplary punishment than is warranted. It should, however, be remembered that the summary court-martial is a court of summary justice, and that its jurisdiction is limited to the less grave offences known to the law, and that, therefore, notwithstanding the fact that it is vested in them, submit to its jurisdiction, it is not required to require more exemplary punishment than is warranted.

The commanding officer is the best and sole judge, at the time, of the necessity which justifies him in trying, without reference, cases which should ordinarily be tried only after reference and sanction. If it should subsequently appear to superior authority that his action was not justified, this should merely be viewed as a grave irregularity for which the commanding officer may be held responsible. It does not affect the legality of the proceedings, and, therefore, the law, and tries without court-martial for the trial of

Offence against the officer holding the trial—It is difficult to lay down a definite rule to this matter, but, speaking generally, a consideration of personal interest which would suffice to render an officer ineligible to act as a member of a general or district court-martial debar him from holding a summary court-martial (save in case of emergency) without previous reference. Insubordination to a commanding officer or disobedience to his personal orders, as well as offences under section 27 (d) when committed towards himself, fall within the terms of the proviso, and should not, except in case of emergency, be tried by summary court-martial without previous reference to the officer empowered to convene a district court-martial (or on active service a summary general court-martial) for the trial of the alleged offender. Theft or misappropriation of property

of which a commanding officer is either part-owner or trustee (e.g., mess or regimental property) should not, except as aforesaid, be tried by summary court-martial without such reference.

It is most undesirable that an offence against an individual should be tried by that individual, and the reason for immediate action would require to be unusually weighty to justify the provision as to reference to higher authority being disregarded when the offence is one against the officer holding the trial.

* These words were inserted by the Indian Army (Amendment) Act 1918

Persons triable
by summary
court-martial

75. A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer or warrant officer.

Sentences
awardable by
summary
court-martial.

76. (1) A summary court-martial * [. . .] may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

(2) † [. . .]

NOTE.

* The words "held by the commanding officer of a corps or department" were repealed by the Indian Army (Amendment) Act 1917

† This sub-section was repealed by the Indian Army (Amendment) Act 1917

Procedure at Trials by Court-martial

President

77. At every general, district or summary general court-martial the senior member shall sit as president

Judge
Advocate.

78. Every general court-martial shall, and every district court-martial may be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General in India, or if no such officer is available, a person appointed by the convening officer

NOTE.

Judge Advocate—See Rules 59 to 61

Superintending
Officer

79. A British officer of not less than four years' service hereinafter called the superintending officer, shall be appointed to superintend the proceedings of every court-martial composed of Indian officers which is not attended by a judge advocate.

NOTE.

Superintending Officer—See Rules 64, 65 and 141 (D) and notes thereto, also note to section 82.

Challenges.

80. (1) At all trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

NOTE.

As to challenges, see also Rule 34 and notes thereto

81. (1) Every decision of a court-martial shall be passed by an absolute majority of votes, and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the accused. Voting of members.

(2) In matters other than a challenge or the finding or sentence, the president shall have a casting vote.

NOTE.

For manner of voting, see Rule 73 and notes thereto

For votes required before a sentence of death can be passed see section 87

82. An oath or affirmation in the prescribed form shall be administered to every member of every court-martial and to the judge advocate or superintending officer before the commencement of the trial. Oaths of president and members.

NOTE.

Prescribed form—See Rules 35, 36 and 95

83. Every person giving evidence at a court-martial shall be examined on oath or affirmation and shall be duly sworn or affirmed in the prescribed form Oaths of witnesses

NOTE.

Prescribed form—See Rule 120

84. (1) The convening officer, the president of the court, the judge advocate, or the commanding officer of the accused person, may, by summons under his hand, require the attendance before the court, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing. Summoning witness and production of documents

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872 sections 123 and 124, or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities

(6) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, high court or court of session, wanted for the purpose of any court-martial, such magistrate or court may require the postal or telegraph

authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(7) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or court.

NOTE.

(2)-(4) See Rule 123 and notes thereto. If a military witness, who has been duly summoned, fails to attend, he can be dealt with under section 38 of the Act. If such a witness has not been formally summoned but merely ordered to attend by some military authority as a matter of discipline (see note to Rule 123) he cannot be dealt with under section 38 for failure to attend the court. Unless, however, he has some adequate excuse, his omission to attend will fall within the terms of section 27 (2) or section 38 (1), as the case may be.

(5) Sections 123 and 124 of the Indian Evidence Act deal with "affairs of State" and "official communications." See Part I, Chapter V, paragraphs 94 and 95, as to how such matters are protected from disclosure in courts of law, including courts martial, except under adequate guarantees for public interests being ascertained. "Affairs of State" include all matters of a public nature with which the Government is concerned.

(6) This subsection indicates the only way in which letters, postcards, telegrams and similar documents in the custody of the postal or telegraph authorities can be made available as evidence. If none of the authorities mentioned in this subsection are available, and it is considered necessary that the document should be retained until such authority is communicated with, application should be made to one of the authorities mentioned in sub-section (7), one of whom is certain to be present in or near any military station in India, however small.

(7) See note to subsection (6) above.

Commissions.

85. (1) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) When the witness resides in the territories of any prince or chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(4) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant cases under the Code of Criminal Procedure, 1898.

powers are not less than those of a magistrate of the first class in British India.

(6) When the witness resides out of India, the commission may be issued to any British consular officer, British magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides.

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer to whom the commission is issued shall examine the witness upon such interrogatories.

(8) The prosecutor and the accused person may appear before such magistrate or officer by pleader or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(11) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Explanation.—In this section, the expression "Judge Advocate General" means the Judge Advocate General in India, and includes a Deputy Judge Advocate General.

NOTE.

This section provides for the examination of witnesses "on commission", that is, by means of a commission issued by the court trying the case and put by it at a distance and noticed by a court-martial in the circumstances of the issue of the commission. An Assistant Judge Advocate General in India may issue a commission, and a Deputy Judge Advocate General in India may issue a commission.

When a court-martial considers that the evidence of a witness should be taken on commission it should forward to the Deputy Judge Advocate General of the command (or to the Judge Advocate General in India if the trial is not held in a command or is held in a command in which there is not a Deputy Judge Advocate General) a list of the questions to be put to the witness, along with an explanation of the circumstances which appear to render his examination on commission necessary. Any questions which the prosecutor or the accused desire to have put to the witness, and which the court considers relevant, should be added.

to commit or of abetment of that offence although the attempt or abetment is not separately charged.]

NOTE.

This section will often prevent a miscarriage of justice by permitting a person charged with one of the offences mentioned in it to be found guilty of a cognate offence. It must, however, be remembered that this section creates no new offences and that a person cannot, under it, be convicted of an offence with which he could not have been originally charged, had the officer ordering his trial so decided. For instance, sub-section (5) above does not admit of a person accused of the theft of mess property being found guilty of dishonestly appropriating the property, as, though clause (d) of section 411, which is restricted to Government property, is not restricted to Government property, the other hand, a person charged, of Government property, claiming it under clause (e) misappropriating it under in sub-section (4), see Code in Part IV.

In practice it will usually be expedient to prefer alternative charges rather than to rely on this section.

* Sub-section (6) was added by the Indian Army (Amendment) Act, 1918.

87. No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the court

Majority requisite to sentence of death.

Evidence before Courts-martial

1 of 1872.

88. The Indian Evidence Act, 1872, shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

General rule as to evidence.

NOTE.

Indian Evidence Act—See Part IV of this Manual, also Part I, Chapter V.

89. A court-martial may take judicial notice of any matter within the general military knowledge of the members

Judicial notice.

NOTE.

"Judicial notice" means that the court will recognise a matter without formal evidence. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know.

For other matters of which a court may (under the Indian Evidence Act) take judicial notice, see Part I, Chapter V, paragraph 66.

90. In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of the Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed until the contrary is shown.

Presumption as to signatures.

91. Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given. [The enrolment of such person may be proved by the production of a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.]

Enrolment paper

*Adjustment of the jurisdiction of Courts-martial
Courts.*

Order in case of
concurrent
jurisdiction.

59. When a criminal court and a court-martial

direct that the accused person shall be detained in custody,

NOTE.

Prescribed military authority—This is, except in cases or 42 where death has resulted, the officer commanding a corps, division, brigade or station in which the accused person in these excepted cases, it is the officer commanding a corps, division or independent brigade in which he is in 164, also R. A. I., Appendix IX.

Power of criminal court to require delivery of offender

over the offender to the nearest magistrate to against according to law, or to postpone proceedings reference to the Governor General in Council.

(2) In every such case the said authority shall over the offender in compliance with the requirement forthwith refer the question as to the court by proceedings are to be instituted for the detention Governor General in Council, whose order upon shall be final.

NOTE.

Prescribed military authority—See note to section 6

Trial by court-martial no bar to subsequent trial by criminal court

71. (1) Notwithstanding anything contained of the General Clauses Act, 1897, or in section of Criminal Procedure, 1898, a person convicted a court-martial may be afterwards tried by a court the same offence or on the same facts.

(2) If a person sentenced by a court-martial this Act to punishment for an offence is afterwards criminal court for the same offence or on the court shall, in awarding punishment, have no tary punishment he may already have undergone.

NOTE.

This section in effect declares that a person is not to be exempted from the ordinary criminal military status, so that a person acquitted of conviction court-martial may still be tried by a criminal court if they constitute an offence under the criminal of the two enactments quoted is—speaking generally “court of competent jurisdiction” a bar to subsequent facts. A court-martial is such a court and therefore specifically excluded. Sub-section (2) of the person tried that a criminal court in awarding offence shall have regard to any military punishment given; while section 66 further declares that when convicted by a criminal court he shall not be tried for the same offence, for definition of “crime” 7 (17).

contingency

NOTE
 The Indian Army Act for making a
 fraudulent enrolment, the answer made
 can therefore be proved by the production of his
 enrolment card (but not any answer made on
 the fact of a properly certified true copy of the
 enrolment card, or when admissible the true copy
 produced by a witness on oath or affirmation and the
 person referred to
 and of the enrolment
 the Indian Army (Amendment) Act, 1918

97-A. (3) A letter, return or other document respecting the service of any person in, or the dismissal or discharge of any person from, any portion of His Majesty's Forces, or respect-
ing the circumstance of any person not having served in or be-
longing to His Majesty's Forces.

shall be evidence in any case in which such letter, report or other document is introduced in evidence, and shall be returned to the sender.

(2) An Army List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by such officers or warrant officers and of the corps, battalion or arm or branch of the service to which such officers or warrant officers belong.

(5) Where a record is made in any regimental book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated.

(2) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record.

(7) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a provost-marshal, assistant provost-marshal or other officer, or any portion of His Majesty's Forces, a certificate purporting to be signed by such provost-marshal, assistant provost-marshal or other officer, or by the commanding officer of that portion of His Majesty's Forces and stating the fact, date and place of such surrender or apprehension shall be evidence of the matters so stated.

(c) When any person subject to this Act is being tried on a charge or charges or is absent without leave, and such person has so conducted himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer second class, a police stationer, a certificate purporting to be signed by such police officer and stating the fact, date and the nature of the apprehension, shall be evidence of

It is further suggested to be a report under the
 Bureau of Chemical Hygiene or Bureau of Chemical Ex-
 aminations, or some other matter or thing duly submitted

1

(2) Evidence received under this section may be either in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary * [* *] to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

NOTE.

Rules 53 and 103 which "prescribe" the other matters which may be proved under this section, should be read with it.

* The words "to prove the signature to such certified extracts, nor shall it be necessary" were repealed by the Indian Army (Amendment) Act, 1919.

Confirmation and Revision of Findings and Sentences.

Findings and sentences
invalid without
confirmation.

94. No finding or sentence of a general or district court-martial shall be valid except so far as it may be confirmed as provided by this Act.

Power to confirm
findings and
sentences of
general court-
martial.

95. The findings and sentences of general courts-martial may be confirmed by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

Power to con-
firm findings and
sentences of
district court-
martial.

96. The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

NOTE.

An officer having power to convene a general court-martial at a port of embarkation can issue his warrant to the officer commanding the troops on board a ship empowering the latter to confirm during the period of the voyage the findings and sentences of district courts-martial held on board the ship.

Contents of
warrant issued
under section
95 or section 96.

97. A warrant issued under section 95 or section 96 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

NOTE.

For warrants issued under sections 95 to 97 see Part V.

Confirmation of
findings and
sentences.

98. (1) The finding and sentence of a summary general court-martial shall require to be confirmed by the convening officer * [or if the convening officer so directs, by an authority superior to the convening officer]—

(a) in the case of the trial of an officer,

(b) in the case of an acquittal or a sentence of death or transportation or imprisonment for a term exceeding two years, and

(c) in any other case if so ordered by the †[convening] officer.

(2) Save as provided in sub-section (1), a sentence passed by a summary general court-martial shall not require to be confirmed but may be carried out forthwith.

NOTE

* These words were inserted by the Indian Army (Amendment) Act, 1918

(1) An order under (c) must be made by the convening officer at the time he convenes the Court, or at any rate before the trial commences. If he has made such an order or if the finding and sentence require confirmation under (a) or (b) he can, instead of dealing with the finding and sentence himself, reserve them for confirmation by an authority superior to him

† This word was substituted for the word "said" by the Indian Army (Amendment) Act, 1918

(2) Carried out forthwith—If a sentence of imprisonment, not requiring confirmation be passed, the president, when passing sentence, must consider the provisions of section 3 (i) of the Indian Army (Suspension of Sentences) Act 19 Part III. The notes to that section should in such cases be consulted.

99. Subject to such restrictions as may be contained in any warrant issued under section 95 or section 96, a confirming officer may when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial

Power of confirming officer to mitigate, remit or commute sentence.

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

NOTE

As to diminution of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see Rule 53. The powers conferred by this section can only be exercised by the confirming authority at such time, when confirming the sentence. After promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the sentence can only be reduced or remitted by one of the authorities mentioned in section 112.

A confirming officer may also, under section 3(i) of the Indian Army (Suspension of Sentences) Act (see Part III) direct that an offender sentenced to transportation or imprisonment be not committed until the orders of a superior military authority are obtained. If himself a superior military authority, he has further powers as such under that Act

* [99-A. When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed and executed on board ship may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation]

Confirmation of finding and sentence on board ship.

NOTE

On active service the officer commanding the troops on board a ship could convene a summary general court-martial on board under clause (c) of section 62

See notes to sections 55 and 96

* This section was inserted by the Indian Army (Amendment) Act, 1918

100. (1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming officer, and on such revision, the court, if so directed by him may take additional evidence

Revision of finding or sentence.

(2) The court, on revision shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent

(3) In case of such unavoidable absence the cause thereof shall be duly set forth and the court shall

proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or if a district court-martial, of three officers.

NOTE.

See Rule 57 and notes thereto for procedure on revision

Which requires confirmation—The finding or sentence of a summary court-martial can, therefore, never be revised. Neither can that of a summary general court-martial be revised if it does not under section 98 require to be confirmed

Finding and sentence of a summary court-martial.

101. The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith?

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a corps

NOTE

Carried out forthwith—The officer holding the trial when passing sentence may, if a sentence of imprisonment be awarded, direct under the provisions of section 5(1) of the Indian Army (Suspension of Sentences) Act that the offender be not committed until the orders of a superior military authority are obtained. See notes to section 5 of the Indian Army (Suspension of Sentences) Act in Part III

Transmission of proceedings of summary courts-martial.

102. The proceedings without delay be forwarded or brigade within scribed officer, and such India, or the officer commanding the army * [or army corps] in which the trial was held, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

NOTE

Division or brigade—Now also District and Brigade area.

Army Corps—Now also Command

Prescribed officer—See rule 164-A

In addition to those mentioned under this rule the following officers have been prescribed—(A. D. Notification No. 843 of 1924) See Part V.

Officers

Persons subject to the Act

The Deputy Adjutant and Quarter-master General, Western Command

Persons serving under the command of the General Officer Commanding-in-Chief, Western Command, other than those serving in a District, Brigade or Brigade Area.

The Officer Commanding, Secunderabad and Rotarum

Persons serving within the limits of their respective commands, provided that the said powers shall not be exercised in respect of trials held by these officers themselves.

The Officer Commanding, Chitral Kotra.

Under Rule 115, the proceedings have to be sent to the reviewing officer through the Deputy Judge Advocate General of the Army in which the trial is held. As to how this officer should deal with an illegal sentence, see Part I, Chapter IV, paragraph 7.

* These words were inserted by the Indian Army (Amendment) Act, 1915

103. Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, is found for any reason to be invalid, the authority who would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence.

Substitution of valid for invalid sentence.

Provided that the punishment awarded by the sentence so passed shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the invalid sentence.

NOTE

This enables any of the authorities mentioned in section 112 to substitute a valid sentence for an invalid one which has been inadvertently confirmed and which is thus not open to revision in the ordinary way. It also gives these authorities similar powers in regard to a sentence not requiring confirmation, i.e., any sentence by summary court-martial, or one by a summary general court-martial, which does not, under section 96, require confirmation.

103-A. (1) Whenever in the course of a trial by court-martial it appears to the Court that the person charged is of unsound mind and consequently incapable of making his defence, or that such person committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the Court shall record a finding accordingly, and the President of the Court or the officer holding the trial, as the case may be, shall forthwith report the case to the confirming officer, or, in the case of a court-martial whose finding does not require confirmation, to the prescribed officer.

Provision in the case of accused being insane.

(2) A confirming officer to whom a case is reported under sub-section (1) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was originally charged.

(3) A prescribed officer to whom a case is reported under sub-section (1) and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner, and shall report the case for the orders of the Governor General in Council.

(4) On receipt of a report under sub-section (3), the Governor General in Council may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

(5) Where an accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention, the prescribed officer may—

(a) if such person is in custody under sub-section (3), on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained under sub-section (4), on a certificate such as is referred to in section 473 of the Code of Criminal Procedure, 1893,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, provided that the offence is a civil offence, by a Criminal Court.

(6) A copy of every order made by the prescribed officer under sub-section (5) shall forthwith be sent to the Governor General in Council.

NOTE.

(1) (a) It is to be observed that two distinct cases are contemplated.

An accused may be of unsound mind and incapable of making his defence or he may have been of unsound mind at the time he committed the act alleged and have recovered sufficiently to take his trial.

(b) *Finding*.—See rule 131 and Third Appendix, p. 302.

(c) *Prescribed officer*.—See rule 164-AA (1).

(3) *Prescribed manner*.—See rule 164-AA (3). The confirming officer who confirms the finding or the prescribed officer should then forward the proceedings to Army Headquarters.

(4) *Other suitable place of safe custody*.—In view of the provisions of section 473, Code of Criminal Procedure, the place of safe custody must, if it is not a lunatic asylum, be a jail.

(5) *Prescribed officer*.—See rule 164-AA (2).

(5) (b) The certificate such as is referred to and etc., is a certificate, in the case of a person detained in a lunatic asylum, by the visitors of such asylum or any two of them, or in the case of a person detained in a jail, by the Inspector General of Prisons, to the effect that, in their or his opinion, such person is capable of making his defence.

CHAPTER IX.

EXECUTION OF SENTENCES.

Form of
sentence of
death.

in
be
by being shot to death.

I shall,
ath by
death

Imprisonment
to be in
military
custody.

105. Whenever any person is sentenced under this Act to simple imprisonment, such sentence shall be carried out by confinement in military custody.

NOTE.

Military custody.—See section 2 (14). The effect of this is that a sentence of simple imprisonment can ordinarily only be carried out in the guard-room or regimental cells of an Indian unit, or in similar custody, unless an order under section 103 has for special reasons been passed by an authority competent to do so. On active service the term covers confinement in a military prison established under the second proviso to section 107, but the offender when there must not, of course, be subjected to rigorous imprisonment, that is to say, to imprisonment with hard labour.

Commencement
of sentence of
transportation
or imprison-
ment.

106. Whenever any person is sentenced under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president or, in the case of a summary court-martial, by the court.

NOTE.

Under this section a term of transportation or imprisonment cannot be made to commence at the expiration of a previous term, but must commence on the day on which the sentence is signed. If, therefore, the court desires to award (say) six months' imprisonment to a person who is already undergoing a sentence of three months, of which one month is unexpired, a sentence of seven months' imprisonment must be passed.

The suspension of a sentence of transportation or imprisonment has no effect on its currency, see section 4 of the Indian Army (Suspension of Sentences) Act in Part III.

Execution of
sentence of
transportation
or imprisonment.

107. Whenever any sentence of transportation or rigorous imprisonment is passed under this Act, or whenever any sentence so passed is commuted to transportation or to rigorous imprisonment, the commanding officer of the person under

sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined, and shall forward him to such prison with the warrant:

Provided that, in the case of a sentence of rigorous imprisonment for a period not exceeding three months, the confirming officer, or, in the case of a sentence which does not require confirmation, the court, may direct that the sentence shall be carried out by confinement in military custody.

*[Provided further that on active service a sentence of rigorous imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.]

NOTE.

Passed—A sentence requiring confirmation is inoperative until confirmed and is, as a matter of fact, not divulged until confirmation has taken place. Even if such a sentence should, improperly, become known to the commanding officer, he cannot, therefore, take action under this section before confirmation has been received.

Such officer as may be prescribed—See rule 152.

Civil prison—That is a prison maintained under the Prisons Act (IX of 1834).

For forms of warrant see Forms A and B in the fourth appendix to the Rules. When a death sentence is commuted by the confirming officer to one of transportation or imprisonment, Form A, or B, with the necessary variations, will be used. See Rule 4 (A).

The first proviso admits of a sentence of rigorous imprisonment if it does not exceed three months being undergone in military custody. Advantage should generally be taken of this proviso to arrange that short sentences of rigorous imprisonment, unaccompanied by dismissal, are undergone in military custody.

When the power of directing imprisonment to be undergone in military custody vests in the confirming officer, the direction should be part of the confirmation minute, but when, as in the case of a summary court-martial, it vests in the court, it should form part of the sentence.

* Under the second proviso which was added by the Indian Army

It is convenient to do so appoint that prison as a place in which such sentences may be undergone

108. Whenever, in the opinion of an officer commanding an

army, [“army corps”] division or independent brigade, any sentence or portion of a sentence of imprisonment cannot, for

Executive
sentences of
imprisonment
in special

NOTE.

Army Corps, Division—Now also Command, and District

Special reasons.—Those reasons which the officer giving the direction considers to be special.

The power conferred in this section might be of use in an emergency, such as an epidemic. It will also admit of local arrangements being made for the execution of a sentence of rigorous imprisonment passed in a colonial garrison when it is, for any reason, inconvenient or undesirable that an offender should be sent to India to undergo his sentence.

When a portion of a sentence of transportation (see section 106A) or of rigorous imprisonment which has to be carried out in a civil prison (see note, section 107) is, under an order made under this section for

special reasons, carried out in local civil custody out of India the warrant of Commitment in Form A or Form B (see fourth Appendix to Rules) must be suitably varied (see Rule 4) and must cite the order made under this section. When the prisoner is to be despatched to India he should be demanded by a warrant in Form F as shown on page 322 and must be committed to the civil prison in India on a fresh warrant of commitment.

* These words were inserted by the Indian Army (Amendment) Act, 1918.

Offenders sentenced to transportation how dealt with until transported.

***108A.** In every case in which a sentence of transportation is passed under this Act, the offender, until he is transported, shall be dealt with in the same manner, as if sentenced to rigorous imprisonment, and shall be deemed to have been undergoing his sentence of transportation during the term of his imprisonment.

NOTE

An order under section 108 and this section read together may be made by competent authority for the temporary confinement in any fit prison or other fit place pending his removal to India of a person sentenced out of India to transportation. A person so sentenced must however be sent to India as soon as it is practicable to send him.

* This section was inserted by the Indian Army (Amendment) Act, 1918.

Communications of certain orders to Civil prison officers.

109. Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined.

NOTE

For forms of warrant under this section see Forms C to F in the fourth appendix to the Rules. The heading of each of these shows clearly the notice that Form C is applicable is to be released, Forms D and civil custody but with a reduced he is to be transferred to military force, in its new form, admits of, sentence is commuted subsequent or imprisonment, Form D or E, and See Rule 4 (A).

Prescribed officer.—See Rule 153

Limit of solitary confinement.

110. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded exceeds three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

111. [This section was repealed by Act 37 of 1920.]

Execution of sentence of fine.

***[111A.** When a sentence of fine is imposed by a court-martial under section 41 or section 42, whether the trial was held within British India or not, a copy of such sentence signed and certified by the president of the Court or the officer holding the trial, as the case may be, may be sent to any Magistrate in British India, and such Magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898, for the levy of fines as if it was a sentence of fine imposed by such Magistrate.]

NOTE

This provision should be used when the fine imposed by sentence of court-martial is not recoverable under section 50 (g) of the Act.

* This section was added by the Indian Army (Amendment) Act, 1918.

CHAPTER X.

PARDONS AND REMISSIONS.

*[112. (1) When any person subject to this Act has been convicted by a court-martial of any offence, the Governor General in Council or Commander-in-Chief in India or, in the case of a sentence which he could have confirmed or which did not require confirmation, the officer commanding the army, any corps, division or independent brigade in which such person at the time of his conviction was serving, or the prescribed officer may,

Pardons and Remissions.

- (a) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded;
- (b) mitigate the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act:

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the Court.

(2) If any condition on which a person has been pardoned or punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the Court shall have effect as if such pardon had not been granted or such punishment had not been remitted:

Provided that, in the case of a person sentenced to transportation or imprisonment, such person shall undergo only the unexpired portion of his sentence.

(3) When under the provisions of section 49 a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial.]

NOTE.

*This section was substituted by the Indian Army (Amendment) Act, 1918

Army Corps, Division.—Now also Command, and District.

Prescribed officer.—See Rule 164B

(1) (a) For instance a sentence of dismissal might be remitted on the condition that the person sentenced shall not receive pay in respect of or count service for any purpose during, the period spent under the dismissal. The conditions, if any, must be clearly stated and the written acceptance of the person obtained. Mitigation or commutation cannot be made conditionally.

A pardon takes away the conviction, and when a pardon has been granted the record of the conviction must be removed from the pardoned person's dossier sheet and will not be provable against him should he be again tried by court-martial and convicted of any offence.

(2) *Unexpired portion.*—This is the period of the sentence less the period the person was in custody in consequence of the sentence, i.e., less the period from date of sentence to date of release in consequence of the remission.

(3) The remission of the punishments mentioned in section 49 would not of itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction may, by reason of this sub-section, be remitted as well.

special reasons, carried out in local civil custody out of India the warrant of Commitment in Form A or Form B (see fourth Appendix to Rules) must be suitably varied (see Rule 4) and must cite the order made under this section. When the prisoner is to be despatched to India he should be demanded by a warrant in Form F as shown on page 322 and must be committed to the civil prison in India on a fresh warrant of commitment.

* These words were inserted by the Indian Army (Amendment) Act, 1918.

Offenders sentenced to transportation how dealt with until transported.

***108A.** In every case in which a sentence of transportation is passed under this Act, the offender, until he is transported, shall be dealt with in the same manner, as if sentenced to rigorous imprisonment, and shall be deemed to have been undergoing his sentence of transportation during the term of his imprisonment.

NOTE.

An order under section 108 and this section read together may be made by competent authority for the temporary confinement in any fit prison or other fit place pending his removal to India of a person sentenced out of India to transportation. A person so sentenced must however be sent to India as soon as it is practicable to send him.

* This section was inserted by the Indian Army (Amendment) Act, 1918.

Communications of certain orders to Civil prison officers.

109. Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined.

NOTE.

For forms of warrant under this section see Forms C to F in the fourth appendix in the Rules. The heading of each of these shows clearly the cases in which it is to be used. It will be noticed that Form C is applicable to cases in which the person concerned is to be released, Forms D and E to those in which he remains in civil custody but with a reduced sentence, and Form F to those in which he is to be transferred to military custody, *i.e.*, to cases in which his sentence, in its new form, admits of, or requires, such custody. When a death sentence is commuted subsequent to confirmation, to one of transportation or imprisonment, Form D or E, with the necessary variations, will be used. See Rule 4 (1).

Prescribed officer.—See Rule 153.

Limit of solitary confinement.

110. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded exceeds three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

111. [This section was repealed by Act 37 of 1920.]

Execution of sentence of fine.

***[111A.** When a sentence of fine is imposed by a court-martial under section 41 or section 42, whether the trial was held within British India or not, a copy of such sentence signed and certified by the president of the Court or the officer holding the trial, as the case may be, may be sent to any Magistrate in British India, and such Magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898, for the levy of fines as if it was a sentence of fine imposed by such Magistrate.]

NOTE.

This provision should be used when the fine imposed by sentence of court-martial is not recoverable under section 50 (g) of the Act.

* This section was added by the Indian Army (Amendment) Act, 1918.

CHAPTER X.

PARDONS AND REMISSIONS.

*[112. (1) When any person subject to this Act has been sentenced by a court-martial of any offence, the Governor or Commander-in-Chief in India or, in the case of a sentence which he could have confirmed or which did not require confirmation, the officer commanding the army, corps, division or independent brigade in which such person at the time of his conviction was serving, or the prescribed officer may,

Pardons and remissions.

- (a) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded;
- (b) mitigate the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act:

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the Court.

(2) If any condition on which a person has been pardoned or punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the Court shall be revived into effect as if such pardon had not been granted or such punishment had not been remitted:

Provided that, in the case of a person sentenced to transportation or imprisonment, such person shall undergo only the expired portion of his sentence.

(5) When under the provisions of section 49 a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial.]

NOTE.

*This section was substituted by the Indian Army (Amendment) Act,

Army Corps, Division.—Now also Command, and District.

Prescribed officer.—See Rule 164B

(1) (a) For instance a sentence of dismissal might be remitted on the condition that the person sentenced shall not receive pay in respect of any service for any purpose during the period spent under the dismissal. Conditions, if any, must be clearly stated and the written acceptance of the person obtained. Mitigation or commutation cannot be made conditional.

A pardon takes away the conviction, and when a pardon has been granted the record of the conviction must be removed from the pardoned person's defaulter sheet and will not be provable against him should he again be tried by court-martial and convicted of any offence.

(5) *Proviso. Unexpired portion.*—This is the period of the sentence less the period the person was in custody in consequence of the sentence, i.e., the period from date of sentence to date of release in consequence of the remission.

(5) The remission of the punishments mentioned in section 49 would not itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction may, by reason of this sub-section, be remitted as well.

CHAPTER XI.

RULES.

Power to
make rules.

113. (1) The Governor General in Council may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the discharge from the service of persons subject to this Act;
- (b) the amount and incidence of fines to be imposed under section 21;
- (bb) the specification of the punishments which may be awarded as field punishments under sections 20 and 45;
- (c) the assembly and procedure of courts of inquiry, and the administration of oaths or affirmations by such courts;
- (d) the convening and constituting of courts-martial;
- (e) the adjournment, dissolution and sittings of courts-martial;
- (f) the procedure to be observed in trials by courts-martial;
- (g) the confirmation and revision of the findings and sentences of courts-martial;
- (h) the carrying into effect sentences of courts-martial;
- (i) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation or imprisonment;
- (ii) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 52A, and the due carrying out of such decisions; and
- (j) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the Gazette of India, and, on such publication, shall have effect as if enacted in this Act.

NOTE.

Rules have been framed under this section and are included with notes in this Part.

(bb) This clause was inserted by the Indian Army (Amended) Act, 1920.

(ii) This clause was inserted by the Indian Army (Amendment) Act, 1917.

(j) Prescribed—See section 7 (21).

CHAPTER XII.

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS.

Property of
deceased
persons and
deserters.

[114. The following rules are enacted respecting the disposal of the property of every person subject to this Act who dies or deserts:—

(1) The commanding officer of the corps, detachment or department to which the deceased person or deserter belonged

shall secure all the moveable property belonging to the deceased or deserter that is in the camp or quarters, and cause an inventory thereof to be made, and draw any pay and allowances due to such person.

(2) In the case of a deceased person who has left in a Government savings bank (including any post office savings bank, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the secretary or other proper officer of the bank to pay the deposit to him forthwith, notwithstanding anything in any departmental rules; and after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental or other debts in camp or quarters (if any) of the deceased, the commanding officer shall deliver over any property received under clauses (1) and (2) to that representative.

(4) In the case of a deceased person whose estate is not dealt with under clause (3), and in the case of any deserter, the commanding officer shall cause the moveable property to be sold by public auction, and shall pay the regimental and other debts in camp or quarters (if any), and, in the case of a deceased person, the expenses of his funeral ceremonies from the proceeds of the sale and from any pay and allowances drawn under clause (1) and from the amount of the deposit (if any) received under clause (2).

(5) The surplus, if any, shall, in the case of a deceased person, be paid to his representative (if any), or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed person.

(6) In the case of a deserter, the surplus (if any) shall forthwith be remitted to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to His Majesty, unless the deserter shall in the meantime have surrendered or been apprehended.

Explanation.—A person shall be deemed to be a deserter within the meaning of this section who has without authority been absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended.] Meaning of desertion.

NOTE

This section was substituted for the original section by the Indian Army (Amendment) Act, 1914

(5)-(6) *Prescribed person*—See Rule 165 (A).

115. Property deliverable and money payable to the representative of a deceased person under section 114 may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or Disposal of certain property without production of probate, etc.

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Property of
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for debt under any process issued by, or by the authority of, any civil or revenue court or revenue-officer.

(2) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the court by the complainant.

120. Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him

Property
exempted from
attachment.

121. Every person belonging to the Indian Reserve Forces shall, when called out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act.

Application
of the last two
foregoing
sections to
reservists

122. (1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

Priority of hear-
ing by courts of
cases in which
Indian officers
and soldiers are
concerned.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to an officer commanding a corps, whose decision shall be final.

NOTE.

For orders as to the speedy disposal of suits by or against officers or soldiers who have obtained leave of absence for the purposes of the suit, see Regulations for the Army in India, para. 287.

making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made.

NOTE.

Prescribed person.—See Rule 155

Application of
section 114 to
lunatics, or
missing on
active service.

116. The provisions of section 114 shall, so far as they can be made applicable, apply in the case of a person subject to this Act becoming insane * [or, who, being on active service, is officially reported missing:]

Provided that in the case of a person so reported missing, no action shall be taken under sub-sections (2) to (5), inclusive, of the said section, until one year has elapsed from the date of such report].:

NOTE.

* These words were added by the Indian Army (Amendment) Act, 1920.

CHAPTER XIII.

MISCELLANEOUS.

Military Privileges.

Complaints
against
officers.

117. (1) Any person subject to this Act who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

(4) Every such complaint shall be preferred through such channels as may be from time to time specified by proper authority.

NOTE.

(1) Channels specified by proper authority—See R. A. I.

Privileges of
persons
attending
court-martial.

118. (1) No president or member of a court-martial, no judge advocate or superintending officer, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

Exemption
from arrest for
debt.

119. (1) No person subject to this Act shall, so long as he belongs to His Majesty's Indian forces, be liable to be arrested

for debt under any process issued by, or by the authority of, any civil or revenue court or revenue-officer

(2) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the court by the complainant.

120. Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him.

Property
exempted from
attachment.

121. Every person belonging to the Indian Reserve Forces shall, when called out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act.

Application
of the last two
foregoing
sections to
reservists.

122. (1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arraign, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

Priority of hear-
ing by courts of
cases in which
Indian officers
and soldiers are
concerned.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to an officer commanding a corps, whose decision shall be final.

NOTE.

For orders as to the speedy disposal of suits by or against officers or soldiers who have obtained leave of absence for the purposes of the suit, see Regulations for the Army in India, para. 227.

The Indian Soldiers' Litigation Act, 1925 (Act IV of 1925), which will be found at pages 505 *et seq.*, provides, among other things, for the postponement, when necessary in the interests of justice, of proceedings pending before a Civil or Revenue Court in British India to which any person subject to the Indian Army Act serving under "special conditions" (see section 3 of the Indian Soldiers' Litigation Act) is a party when such person is unable to appear in person or is not represented by any person duly authorized to appear, plead or act on his behalf. This concession, however, does not necessarily extend to pre-emption cases or to cases where the soldiers' interests are identical with those of any other party to the proceedings and are adequately represented by such other party or are merely of a formal nature.

There are also the arrangements, made in 1910 and 1911, stated below, which may still prove to be useful in cases in which advantage is not taken or cannot be taken of the Indian Soldiers' Litigation Act.

The following is an extract from Adjutant General's Circular No. 53 E., dated 25th February 1910, regarding civil proceedings against soldiers serving in China (for certain other places see below) —

Civil courts have received instructions to fix the hearing of suits to which soldiers of the Indian Army serving at stations in China are parties for a date not less than four months in advance of the date of posting the summons or notice.

Immediately on receipt of a summons or notice a soldier should act as follows —

- (i) Authorise a person to defend the suit in his stead. The authority must be in writing, must be signed by the soldier in the presence of his commanding officer, and must be countersigned by the latter (First Schedule, Order XXVII, Code of Civil Procedure, 1908). The person so authorised may defend the suit *in person* in the same manner as the soldier could do if present, or he may appoint a pleader to defend the suit on behalf of the absent soldier; or
- (ii) Appoint a pleader or recognised agent to act on his behalf (Order III, *ibid.*) In both these cases, the person authorised under (i) or the pleader or agent appointed under (ii) should be fully instructed so as to be competent to defend the suit; and the soldier must be content that the case should be decided on the merits of the defence put in on his behalf by such person or pleader, or
- (iii) If the soldier is not content to entrust the defence of his suit to such person or pleader, but considers it essential that he himself should be present, or that a longer time should be given him to collect materials for defence of his suit, he should forward a letter to a pleader, to be produced in court, instructing him to apply for an adjournment and giving fully the special reasons for such request. In this case the soldier should give the pleader no other instructions, nor authorise him to do anything but apply for an adjournment. If the court then declines to adjourn the case the decree would be passed 'ex parte,' and the soldier on returning to India would be entitled to apply for the setting aside of the decree under First Schedule Order IX, rule 13, *ibid.*; or
- (iv) The soldier can instruct a person or pleader to defend the suit and also to apply for an adjournment, but this course is dangerous, as, if the adjournment is refused, the case is decided not 'ex parte,' but on such defence as is put in, and the soldier thus loses his chance of subsequently taking action under Order IX, rule 13, above.

Arrangements similar to those introduced in regard to China were made in regard to the following places, the minimum interval between the posting of the summons or notice and the hearing of the suit being fixed, vide Adjutant General's Circular No. 873-1 (A. G. S.), dated 27th March 1911 as follows:—

	Months
1. All stations on the Persian Gulf	4
2. Tabriz	5
3. Somaliland	3
4. Uganda	
5. Straits Settlements	
6. Nyasaland	4
7. Ceylon	2
8. Andaman Islands	
9. Aden	
10. Burma	

The clauses numbered (i) to (iv) in Adjutant General's Circular No. 53-E. of 25th February 1910, quoted above, are equally applicable to suits against officers and soldiers serving in India or elsewhere (other than the places mentioned) who cannot obtain leave of absence to appear personally. Instead, however, of applying for an adjournment, as suggested in clause (iii), it will, when the officer or soldier is in India, often be sufficient if his agent or pleader applies to have the evidence of his principal taken on commission.

Deserters and Military Offenders.

123. (1) Whenever any person subject to this Act deserts, ^{Capture of deserters.} the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, to military custody.

(2) Any police-officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

NOTE.

Civil authorities—This includes political and police authorities.

124. (1) Any person subject to this Act who is charged ^{Arrest by military authorities.} with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) The charge against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

NOTE.

(3) The investigation herein provided for is necessary as a preliminary either to summary disposal of the case or the trial of the accused by court-martial.

125. Whenever any person subject to this Act, who is ^{Arrest by civil authorities.} accused of any offence under this Act, is within the jurisdiction of any magistrate or police-officer, such magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

126. (1) When any person subject to this Act has been ^{Inquiry on absence of person subject to Act.} absent without due authority from his duty for a period of sixty days, a court of inquiry shall, as soon as practicable, be assembled and, upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency, if any, of property of the Government entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessaries; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the

THE INDIAN ARMY ACT RULES.

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80. Transmission of proceedings after finding.

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INDIAN ARMY ACT RULES.

CHAPTER I

PREFACE.

1. These rules may be cited as the "Indian Army Act, 1911 Rules".

2. In these rules, unless there is anything repugnant to the subject or context—

(a) "Proper military authority", when used in relation to any power, duty, act or matter, means such military authority as, in pursuance of the Regulations of the Army or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(b) "The Act" means the Indian Army Act, 1911.

3. Any report or application directed by these rules to be ~~submitted~~ made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless the authority, on account of military exigencies or otherwise, dispenses with the writing.

4. (a) The forms set forth in the appendices to these Rules, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient, but a deviation from such forms will not, by reason only of such deviation, render any charge, warrant, order, proceedings or other documents invalid.

(b) An omission of any such form will not, by reason only of such omission, render any act or thing invalid.

(c) The notes to and instructions in the forms will be considered as instructions which it is expected to follow in all cases to which such notes and instructions apply, but shall not have the force of rules.

5. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service.

6. In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.

CHAPTER II.

ENROLMENT AND ATTESTATION.

Enrolling
officers.

7. The following officers shall be "enrolling officers" for the purposes of section 8 of the Act:—

- | | |
|--|--|
| (i) All recruiting officers | } As regards all persons. |
| (ii) All assistant recruiting officers | |
| (iii) The officer commanding a station. | |
| (iv) The officer commanding a corps | } As regards persons enrolled in that corps |
| (v a) The officer commanding a regiment or a battalion of a corps | |
| (v) The officer commanding a depot of a corps | |
| (v a) The officer in charge of records of a corps | |
| (vi) The officer commanding a battery | } As regards persons enrolled in an artillery corps |
| (vii) The officer commanding a company of artillery. | |
| (viii) The officer commanding an artillery ammunition column | |
| (ix) The officer commanding an artillery depot. | |
| (ix a) The officer commanding a signal squadron, company, or detached troop | } As regards persons enrolled in the Indian Signal Corps. |
| (v) The officer commanding a reserve centre | |
| (xi) The officer commanding a company of the Indian Army Service corps. | } As regards persons enrolled in the reserve |
| (v a) The officer commanding a Mechanical Transport training centre, Company or repair shop. | |
| (xii) The officer in charge supplies or transport of a station | |
| (xiii) The officer commanding a combatant unit to which transport is permanently attached. | |
| (xiv) The officer commanding a company of the Indian Hospital Corps | } As regards persons enrolled in the Indian Hospital Corps |
| (xv) An officer of the Indian Army Ordnance Corps in charge of an establishment in which persons of that corps are serving | |
| (xvi) The Proof and Experimental Officer, Balasore. | } As regards persons enrolled in the Proof and Experimental Establishment, Balasore. |
| (xvii) The officer commanding a regiment of Indian Cavalry or a battalion of Indian Infantry or pioneers | |
| (xviii) The officer in charge of any division or branch of any other department | } As regards persons enrolled in that department. |
| (xix) The officer in charge of a fort armament establishment | |
| (xx) The officer in charge of a coast defence establishment. | } As regards persons enrolled in an artillery corps as fort armament in-cars |
| (xxi) The officer commanding a British cavalry or infantry unit | |
| (xxii a) The officer commanding a Works battalion | } As regards persons enrolled in the corps of British cavalry or British Infantry. |
| | |
| | } As regards persons enrolled in the Works Corps |
| | |

- (xxiii) The principal of a Government Medical School.
 (xxiv) The Second-in-Command of a Corps of Sappers and Miners.

As regards Indian Military Medical pupils.
 As regards persons enrolled in that Corps

Corps—See Indian Army Act, section 7 (2), and Rule 161 (A). Every person enrolled under the Act must belong to some corps or department from which he can only be transferred in accordance with the conditions of his enrolment (if they provide for such transfers) or with his own consent. He can be transferred, with or without his consent, from one portion of his corps or department to another.

(x)—Direct enrolments into the reserve of a corps can be effected either by the officers here indicated or by the ordinary enrolling officers of the corps of which the reserve forms part.

For Forms of Enrolment—See First Appendix, page 260 post

8. All combatants, and the following enrolled persons other than combatants, shall, when reported fit for duty, be attested as provided in section 12 of the Act — Persons to be attested.

- (i) Enrolled personnel of the Indian Hospital Corps except persons belonging to the general section of that corps.
- (ii) Bullock drivers, and camel drivers of silladar camel units of the Indian Army Service Corps
- (iii) Persons serving in any Corps or Department who may be selected for non-commissioned rank.

9. (1) The oath or affirmation to be taken on attestation will be in one of the following forms or in such other form to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested, or otherwise binding on his conscience Oath or affirmation to be taken on attestation.

Form of oath

I _____ do swear that I will be faithful and bear true allegiance to His Majesty the King-Emperor, His heirs and successors, and that I will, as in duty bound, honestly and faithfully serve in His Majesty's Indian Forces and go wherever I may be ordered by land or sea, and that I will observe and obey all commands of any officer set over me even to the peril of my life. So help me God.

The second person may, when necessary, be substituted for the first in this form of oath, and the words "So help me God" omitted or varied.

Form of affirmation

I _____ solemnly affirm in the presence of Almighty God that I will be faithful and bear true allegiance to His Majesty the King-Emperor, His heirs and successors, and that I will, as in duty bound, honestly and faithfully serve in His Majesty's Indian Forces and go wherever I may be ordered by land or sea, and that I will observe and obey all commands of any officer set over me even to the peril of my life.

(a) The oath or affirmation prescribed in this rule shall, whenever practicable, be administered by the commanding officer of the person to be attested or in the case of persons enrolled in a corps of Sappers and Miners, by the second-in-

this rule or of section 17 of the Act, as the case may be, is hereinafter called a "discharge certificate".

(b) * * *

(c) A discharge certificate may be furnished either by personal delivery thereof by or on behalf of the commanding officer to the person dismissed or discharged or by its transmission by post to such person.

(1) *Discharge certificate*—The proper form to use is I.A.F.Y. 1949. But any certificate which complies with section 17 of the Act would be legally sufficient.

(2) *Transmission by post*—When a discharge certificate is sent by post it should be sent registered.

12. The dismissal of a person subject to the Act, whose dismissal otherwise than by sentence of a court-martial is duly authorised, or the discharge of a person so subject whose discharge is duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The authority competent to authorise such dismissal or discharge may, when authorising the dismissal or discharge, specify any future date from which it shall take effect: Provided that if no such date is specified the dismissal or discharge shall take effect from the date on which it was duly authorised, or from the date on which the person dismissed or discharged ceased to do military duty, whichever is the later date.

Date from which discharge, or dismissal otherwise than by sentence of court-martial, takes effect.

All convenient speed—See note to section 16 of the Act. In the case of a person serving in India with his unit it will generally be convenient for the authority authorising the dismissal or discharge not to specify any date but to leave the commanding officer to relieve the person of military duty on the most convenient date. In other cases it may sometimes be more convenient for the authority to specify the date and sometimes for him to leave it unspecified.

Any future date—The authority authorising a dismissal or discharge cannot therefore make the dismissal or discharge retrospective. Moreover he must, if he desires to specify a date, specify it at the time he authorises the dismissal or discharge. There is no legal objection to the "future date" being in suitable cases, e.g., "date of disembarkation", but, whenever possible a precise date should be specified. In the case of persons serving out of India at certain Imperial stations regard must be had to Army Department Notification No. 274, dated the 20th February 1935, and notes thereon on page 540 post. The discharge certificate should be furnished to the person on the date from which the dismissal or discharge takes effect. But see Rule 11 and note.

13. Instructions as to the authorities empowered to authorise the discharge of persons subject to the Act, and the procedure to be observed in each case are contained in the following table. In this table "Commanding Officer" means the officer commanding the corps or department to which the person to be discharged belongs. It also includes as regards persons under their command, the officers specified in items (iii), (iv) to (xviii), and (xx) to (xxiii) of Rule 7. Any power conferred by this rule on any authority may be exercised by any higher authority.

Authorities empowered to authorize discharge.

To which the person to be discharged belongs—That is, the corps or department in which he was enrolled, or to which he has been transferred. See Rules 7 (8) and 161 (1), and notes to the former rule. The case of the larger corps and departments, which have either no definite commanding officer or the commanding officer of which is at a distance, is provided for in the latter part of this rule, which gives the powers as to discharge of a commanding officer to certain officers on the spot.

TABLE.

Class.	Cause of discharge	Competent authority to authorize discharge	Special instructions
Indian officers (other than Indian officers of the Indian Medical Department and of the Indian Army Veterinary Corps).	(i) On transfer to the pension establishment (a) At his own request with less than 22 years service	Commanding officer	Under (a), discharge should be carried out within 2 months of application unless war is imminent or otherwise.
	(b) On completion of 22 years' service, unless retained on the active list as a special case for a further specified period with the sanction of the Commander-in-Chief	Data	Under (b), commanding officers who consider it desirable to retain on the active list an Indian officer who is desirous of continuing to serve beyond the date on which he would otherwise be retired should forward an application to that effect 6 months before that date. In all other cases discharge should be carried out in accordance with the provision of Rule 11.
	(ii) On resignation of his commission	Commander-in-Chief in India	
	(iii) Having been found medically unfit for further service	Commanding officer	To be carried out only on the recommendation of an Invaliding Board.
	(iv) On transfer to the pension establishment otherwise than under items (i) and (ii)	Commanding officer	
Indian Medical Department and Indian Army Veterinary Corps.	(v) With gratuity, other than at his own request or under item (ii)	Data	
	(vi) His services being no longer required.	Data	
	(vii) At his own request, on transfer to the pension establishment	Director-General of the Indian Medical Service or Director of Veterinary Services in India, as the case may be	
	(viii) On resignation of his commission or warrant	Indian Officers—as in (a); Warrant officers—Director-General of the Indian Medical Service or Director of Veterinary Services in India, as the case may be	

Class	Cause of discharge.	Competent authority to authorize discharge	Special instructions.
Indian Medical Department, and Indian Army Veterinary Corps	(ix) Having been found medically unfit for further service	may be	on of
	(x) On transfer to the pension establishment otherwise than at his own request, or under item (ix)	Indian Officers—as in (ix). Warrant Officers—Director-General of the Indian Medical Service or Director, Veterinary Services in India, as the case may be	
	(xi) His services being no longer required	Indian Officers—as in (ix). Warrant Officers—Brigade Commander	The Brigade Commander or higher authority will, save in exceptional circumstances, exercise this power only in consultation with the Director-General of the Indian Medical Service, or Director, Veterinary Services in India, as the case may be
Persons enrolled under the Act who have been attested	(xii) On terminating service (with or without pension or gratuity)		To be carried out in accordance with the conditions of his enrolment and with section 18 of the Act and Rules 10, 11 and 12
	At his own request, having fulfilled the conditions of his enrolment	Commanding Officer	Applicable to persons whose discharge on completion of the period for which they were enrolled is not obligatory, and to persons dischargeable under item (xiii) (a) who have been allowed to continue to serve
	(xiii) On completion of service (with or without pension or gratuity)		To be carried out in accordance with the conditions of his enrolment and with section 18 of the Act and Rules 10, 11 and 12
	(a) Otherwise than at his own request, having reached the stage at which discharge may be enforced	Persons below the rank of havildar (or equivalent rank) Commanding Officer. Persons of the rank of havildar (or equivalent rank)—Brigade Commander	(a) Applicable to persons who have earned pension or gratuity whose discharge otherwise than at their own request may, under the conditions of their enrolment, be enforced after a specified period of service

Class.	Cause of discharge.	Competent authority to authorize discharge	Special instructions
Persons enrolled under the Act who have been attested—contd.	(b) On termination of engagement	Commanding Officer.	(b) Applicable to persons whose discharge on termination of their engagement is, under the conditions of their enrolment, obligatory
	(c) On completion of a period of Army Service only, there being no vacancy in the Reserve	Persons unwilling to extend their Army Service—Commanding Officer. Persons willing to extend their Army service but not approved—Brigade Commander	(c) Applicable to persons enrolled for both Army Service and Reserve Service. A person who has the right to extend his Army Service and wishes to exercise that right cannot be discharged under this head.
	(d) Having reached age for discharge	Commanding Officer.	(d) Applicable to persons whose discharge is obligatory on reaching the age fixed under the conditions of their enrolment, or in the absence of such conditions, by the regulation for the Reserve
	(xiv) Having been found medically unfit for further service	Ditto	To be carried out only on the recommendation of an Invaliding Board
	(xv) Having re-entered the service after being dismissed or discharged, without, at the time of such re-entry, stating the fact of his previous dismissal or discharge, or showing his certificate of dismissal or discharge	Ditto	
	(xvi) Not being a good rider	Ditto	Only applicable to persons enrolled as combatants in a mounted corps and whose duties require them to be mounted. Liability to discharge under this item ceases on completion of three years' service from date of enrolment.
	(xvii) On transfer to the pension establishment, or with gratuity, otherwise than under items (xii), (xiii) or (xiv).	Brigade Commander. Com-	
	(xvii-a) On compassionate grounds before fulfilling the conditions of his enrolment	Ditto.	The Brigade Commander will exercise this power only when he is satisfied as to the bona fides of the application and when the application discloses the existence of compassionate grounds
	(xviii) His services being no longer required	Ditto.	

Class.	Cause of discharge.	Competent authority to authorize discharge.	Special instructions.
Persons enrolled under the Act, but not attested.	(xix) On compassionate grounds before fulfilling the conditions of his enrolment	Brigade Commander	The Brigade Commander will exercise this power only when he is satisfied as to the bona fides of the application and when the application discloses the existence of compassionate grounds
	(xx) All other classes of discharge	Commanding Officer.	Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.

CHAPTER IV.

INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL.

SECTION 1.—INVESTIGATION OF CHARGES AND REMAND FOR TRIAL.

Power of Commanding Officer.

14. Every commanding officer shall take care that a person under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reasons thereof, shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

Duty of commanding officer as to investigation of charges for offences.

Provided that Sunday, Good Friday and Christmas day shall be excluded in reckoning the periods of forty-eight hours specified in this rule.

Commanding officer.—See Indian Army Act, section 7 (6)

This rule applies to officers as well as soldiers.

Investigated—This means that the investigation must be commenced, though it may be impossible to complete it within the time here specified.

Shall be reported—The report should be made by letter and should refer specifically to the case and state the reasons justifying the detention and preventing the investigation. The absence of an important witness would justify a remand, or the accused might be ordered to return to his duty, with a distinct intimation that his case will be investigated as soon as the absent witness can be obtained.

15. (A) Every charge against a person subject to the Act shall be heard in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him and to call any witnesses and make any statement in his defence.

Disposal of the charge or adjournment for taking down the summary of evidence.

(b) The commanding officer shall dismiss a charge brought before him if, in his opinion, the evidence does not show that some offence under the Act has been committed, and may do so if, in his discretion, he thinks the charge ought not to be proceeded with.

(c) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, either—

- (1) dispose of the case summarily; or
- (2) refer the case to the proper superior military authority, or
- (3) adjourn the case for the purpose of having the evidence reduced to writing, or
- (4) if the accused is under the rank of warrant officer, order his trial by summary court-martial

Provided that the commanding officer shall not order trial by summary court-martial without reference to the officer empowered to convene a district court-martial or so active service a summary general court-martial for the trial of the alleged offender unless either—

- (i) the offence is one which he can try by summary court-martial without reference to that officer; or
- (ii) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline

(n) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs

(o) The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down

(p) The evidence of each witness when taken down, as provided in (n) and (o), shall be read over to him, and shall be signed by him, or if he cannot write his name, shall be attested by his mark and witnessed. Any statement of the accused material to his defence shall be added in writing and read over to him.

(q) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand English the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(A) Every offence for which a person subject to the Indian Army Act can be punished under that Act is either a military offence, or a civil offence punishable under section 41 or 42 of the Act. If it is a military offence, it is either particularly specified in the Act or is an act or omission prejudicial to good order and military discipline punishable under section 39 (1). Where the act or omission is not a civil offence punishable under section 41 or 42 and is not specified in the Act, the commanding officer must consider whether it is or is not prejudicial to good order and military discipline as, if not, the charge must be dismissed. He must also

the statement was made voluntarily the mere fact that the warning was not given will not prevent the statement being used as evidence. In no case must he be authoritatively called on to account for his proceedings, or required to make any statement, or asked any questions; the answers to any such question will not be admissible in evidence against him.

For the power to dispense with the provisions of paragraphs (D), (E), (F), (G), of this rule, see Rule 25.

Remand of
accused.

16. (1) The evidence and statement (if any) taken down in writing in pursuance of Rule 15 (in these rules referred to as the summary of evidence) shall be considered by the commanding officer, who thereupon shall either—

- (1) remand the accused for trial by court-martial, or
- (2) refer the case to the proper superior military authority or
- (3) if he thinks it desirable, rehear the case and dispose of it summarily.

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay either assemble a summary court-martial (after referring to the officer empowered to convene a district court-martial or on active service a summary general court-martial when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case requires.

(C) The summary of evidence, or a true copy thereof, shall be laid before the court-martial before which the accused is tried on the assembly of the court.

(A) The commanding officer is to consider the evidence after it has been reduced to writing, and should be careful to note whether or not the evidence taken down in the summary corresponds to that given before him at the investigation. On the evidence being reduced to writing a different aspect may be given to the case, if so, the commanding officer may rehear the case and if he thinks fit, dispose of it summarily, or try it by summary court-martial if the law permits him to do so. See Indian Army Act, section 73, and notes to preceding rule.

If the commanding officer determines to remand the accused for trial by court-martial he will have to consider by what class of court-martial he should be tried. As a general rule this will be a summary court-martial.

Where precise information as to the locality of the offence is likely to be of assistance in the case, the commanding officer should ascertain from the superior authority, if it is a murder case, or position duplicate, and these matters subsequently produced at the trial, and put in and sworn to by the accused (if necessary) before the trial, and given at the trial, and

Vernacular documents attached to a summary of evidence should be accompanied by a translation.

(B) Before applying for a general or district court-martial the commanding officer should comply with section 61 (2) of the Indian Army Act, as—unless the convening officer happens to order trial by British officers—the necessity for giving the accused the opportunity of claiming trial by such officers will otherwise cause unnecessary delay.

Unnecessary delay—This delay should not ordinarily exceed thirty-six hours in calculating which Sunday, and the other days mentioned in the proviso to Rule 14, should be excluded.

(C) Where the accused is charged with several offences the evidence in relation to each offence should be kept, so far as possible, distinct.

The convening officer in the case of a general or district court-martial should always order a copy of the summary of evidence to be given to the accused person if the case is complicated.

17. When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase the punishment for that offence.

Summary award of punishment by commanding officer.

Awarded punishment—See Rule 15 (c) (1) and notes.

The award is considered final when the accused has been removed from the presence of the commanding officer. The commanding officer can at any time before its completion diminish the punishment, though he cannot add to it.

A person amenable to the Indian Army Act has no right to claim a trial by court-martial instead of submitting to the summary award of his commanding officer, but the commanding officer may, if he thinks proper, vindicate the justice of his award finding such person guilty, by remanding him for trial by court-martial instead of punishing him summarily, but he must do so before the accused leaves his presence after the award is made.

Framing Charges.

18. (A) A charge sheet shall contain the whole issue or issues to be tried by a court-martial at one time.

Charge-sheet and charge.

(B) A charge means an accusation contained in a charge-sheet, that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.

19. Every charge-sheet shall begin with the name and description of the person charged, and state, in the case of an officer, his rank, name, and corps or department (if any), and in the case of a warrant officer, non-commissioned officer, soldier or other enrolled person, his number, rank, name and corps or department (if any). When the accused person does not belong to the regular forces the charge-sheet shall show by the description of him, or directly by an express avowment, that he is amenable to Indian military law in respect of the offence charged.

Commencement of charge-sheet.

The name or description of a person charged is immaterial so long as his identity is established, see also note to rule 21 (A) and rules 40 (A) and 82. In military courts it is also necessary to establish that he is subject to military law, if he is a civilian, or if his name and position are unknown, as may happen in the case of active service, the charge should expressly aver that he was subject to military law, although it will be sufficient if the description of the accused is such as to imply that he was so subject. Evidence must in such a case be given showing that the person falls under the liability clause of the Act (Indian Army Act, section 2).

When a soldier holding an appointment is brought to trial by court-martial he is to be arraigned in his army rank with his appointment also designated thus—

No _____ Sepoy (Lance Naik)
Regiment

20. (A) Each charge shall state one offence only, and in no case shall an offence be described in the alternative in the same charge.

Contents of charge

(B) Each charge shall be divided into two parts—

(1) The statement of the offence, and

(2) the statement of the particulars of the act, neglect, or omission constituting the offence.

(C) The offence shall be stated, if not a civil offence, in the words of the Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(D) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as constituting the offence.

(E) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first mentioned charge as well as of the other charge.

(F) Where it is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts, and the sum of the loss or damage it is intended to charge.

(A) to (C) See Second Appendix, Forms of Charges, and note as to use of Forms of Charges.

A single transaction, although technically disclosing more than one offence, should not as a rule be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged, the language being admissible in evidence as to the intent.

When offences against civil law are tried by court-martial under sections 41 and 42 of the Indian Army Act, although technical terms need not be used in the charge, the essence of the civil offence must be expressed.

(D) If of the acts or omissions indicated in the particulars sufficient are not proved to constitute the offence charged, but nevertheless other acts and omissions not so indicated sufficient to constitute the offence are proved, the accused is entitled to be acquitted of the charge, but may be detained in custody and be tried anew in respect of the last mentioned acts or omissions. For instance, if the accused is charged with having been absent without leave, in that he was absent from his regiment without leave on the 10th, 11th and 12th days of August, and he proves that on those three days he was in the line on duty, but it appears from the evidence that he was absent without leave on the 21st of the same month, the date is so material as to amount to a new charge, and the accused must be acquitted, though he may be tried on a new charge of being absent without leave on the 21st of August. In such a case a special finding is of no avail, as it cannot introduce new material particulars not mentioned in the charge. See note to Rule 61 (C).

If, however, he was charged with being absent from the 10th of August until he was apprehended on the 21st, and it is proved that he was absent during that time, but that his absence began on the 1st of August and he was apprehended on the 23rd, he may be convicted, as the material part of the charge, absence from the 10th to 21st of August, is proved.

When there is a difference between the head of the charge and the statement of the particulars, the charge is a totally different offence, the charge is a plea of guilty could not be upheld. For instance, in the particulars of a charge, as, for instance, the mention in the particulars of a charge for assaulting a superior officer [section 27 (d)] of grossly insubordinate language [section 23 (a)], which accompanied a menacing gesture and showed its purport, or a charge of desertion (in which the duration of the absence was an element), where the particulars stated that the accused absented himself without leave for the time stated. Neither would such a merely technical difference, as where the word assault is used in the statement of offence, while the particulars disclose the use of criminal force, invalidate a charge, if the statement of offence and the particulars taken together supply the court and the prisoner with sufficient information of the nature of the offence, which the court has to try and the prisoner to meet. Where the head of charge states an offence, but the statement of particulars discloses no offence, the charge is not invalid, if, taken as a whole, it informs the accused of the allegations he is called upon to meet, and the offence for which he is arraigned.

(E) If in such cases the accused were to be acquitted of the first charge and convicted of the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

(F) If these facts are stated in the charge, evidence must be given by the prosecution to show the amount which ought to be deducted from the pay and allowances of the accused.

ould seek the advice of the deputy or the command in any case where doubt a charge should be framed for submission if offences and for offences connected audulent nature except ordinary theft of the possession (in its ordinary and soldier stealing his comrade's kit by removing it from his box or chest, should be referred to the deputy or assistant judge advocate general before trial

21. (A) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

Validity of charge-sheet.

(B) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be unphly included though not expressed therein.

(A) Although the trial of an offender is not invalid on account of a mistake in a name, such mistakes are dangerous, in so far as they may lead to mistakes of substance. For instance, the accused might thus be mistaken for a man named in a certificate of previous conviction or in the defaulters' book, and a mistake of this description might cause the invalidity of the whole proceeding. Where, however, a man has been enrolled and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting under Rule 40 or Rule 99 any mistake in the name or description of accused.

(A) The object of this paragraph is purely legal, and does not touch the duties of an officer. If the proceedings were questioned in a court of law it would require that court to presume matters which, though not stated in the charge, were necessary to support its validity

Preparation for defence by accused person.

22. An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend or legal adviser whom he may wish to consult.

Opportunity for accused to prepare defence

The freest communication which is consistent with good order and military discipline and with the safe custody of the accused should be allowed. A failure to give the accused full opportunity of preparing his defence, and the free private communication with others for the purpose, may invalidate the proceedings.

The accused is not bound to call as witnesses every one with whom he communicates with reference to giving evidence

As to friend of accused in court, see Rules 81, 115 and 145, and as to counsel at general and district courts-martial, Rules 83 to 89

As to the right of accused to consult the judge-advocate on questions of law, see Rule 81.

For power to dispense with this rule, see Rule 25

23. (A) The accused before he is arraigned shall be informed by an officer of every charge on which he is to be tried; and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

Warning of accused for trial.

The interval between his being so informed of the charges against him and his arraignment must be such as to allow him to have his witnesses present, and to consider his defence.

(B) The officer at the time of so informing the accused shall give him a copy of the charge-sheet and a vernacular translation

of the same, and shall, if necessary, read and explain to him the charges brought against him.

(c) If he desires it, a list of the names, rank and corps (if any) of the officers who are to form the court, and where officers in waiting are named, also of these officers, will, in courts-martial other than summary courts-martial, be given to the accused.

(d) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.

(A) Arraignment consists in the charge being read to the accused after the opening of the court, and in his being asked if he is guilty or not. In summary courts-martial commanding officers of the accused for witnesses shall appear, or after the court has been convened, the commanding officer will himself ask of witnesses asked for by a person under orders for trial by summary court-martial.

The request of the accused should only be refused if it is quite clear that evidence of the witness will be immaterial, or if it is impossible to secure the attendance of a witness within a reasonable time. Any refusal of his request will be communicated to the court with the reasons for the refusal, and the court will deal with it under paragraph (D).

In the case of an essential witness the court should always adjourn for the purpose of enabling him to attend, or of being examined on commission, as the omission to do so may cause the proceedings to be invalid.

If a copy of the summary of evidence has not been given to the accused, notice as to the witnesses to be called by the prosecution should be given to him when he is warned for trial. See Rule 122 and note. If the accused has received a summary of evidence, and witnesses whose evidence is not contained therein are to be called, similar notice should be given to him.

(E) A copy and translation of the charge-sheet must always be offered to the accused unless the provisions of this rule are dispensed with under Rule 25. Even where it is dispensed the full charge must be clearly explained to him as otherwise he has not proper opportunity to make his defence. If the accused objects to the charge he will have an opportunity of making his objection when he is called on to plead.

(C) In the case of a general court-martial this list should invariably be delivered, although a request is not made. In the case of a district court-martial the list should be given, though not asked for, if there is any reason to suppose that the accused may reasonably object to any member of the court.

In the case of summary, and the prosecutor in the case of summary, on whom the duty of compliance usually falls, and he should, when complied with, be on the ground of military virtue of Rule 25, but in the case of the charge and opportunity of calling his witnesses.

(D) See note above on (A).

Joint trial of several accused persons.

24. Any number of accused persons may be tried together for an offence charged to have been committed by them collectively, but in such case notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charge, and any accused person may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court to be tried separately, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence. The convening authority or court, if satisfied that the evidence will be material, and if the nature of the charge admits of it,

shall allow the claim, and such accused person shall be tried separately.

If the nature of the charge.—In the case of conspiring to cause a mutiny or joining in a mutiny, the essence of the charge is combination between the accused. In such a case, the nature of the charge may not admit of their being tried separately. In cases of doubt, the accused should be tried separately.

Certain offences cannot from their nature be committed jointly. Such are intoxication, sentry sleeping upon his post, malingering, giving false evidence, cowardice, etc., and, speaking generally, all offences where a person's individual state of body or mind is of the essence of the offence. For instance a guard ran away and hid himself when a soldier "ran amok." It was held that separate charges under section 25 (b) were necessary.

Exception from Rules.

25. Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline, render it impossible or inexpedient to observe any of the Rules 15 (b), (e), (f), (g), 16, 22 and 23, he may, by order under his hand, make a declaration to that effect, specifying the nature of such exigencies or necessities, and thereupon the trial or other proceedings shall be as valid as if the rule mentioned in such declaration had not been contained herein; and the declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial.

Suspension of rules on the ground of military exigencies or the necessities of discipline.

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

The nature, and not merely the existence, of military exigencies, or the necessities of discipline, must be stated in the order.

This power conferred by this rule should hardly ever be exercised, except when on active service, and then only if absolutely necessary. It may, however, occasionally be necessary to resort to it on the eve of embarkation, or on the line of march, or possibly in an extreme case, where the necessities of discipline require a very speedy trial and punishment.

In exercising the power under the rule, the officer must consider whether it is necessary to dispense with all the rules mentioned. For example, the observance of Rule 15 (b), (e), (f), (g) may be practicable, although that of Rule 23 is not so. If Rule 15 (b), (e), (f), (g) is suspended by the order, some means must be taken to inform the accused of the charge, and of the names of the witnesses, and of the nature of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension.

The power of dispensing with Rule 22 is only intended to be exercised in case it is necessary to try an accused person before he can communicate with any witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend on the spot.

Full opportunity of making his defence.—The accused will not have this opportunity unless he receives, in reasonable time, the information mentioned above and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso, and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

*Alternative Procedure*Alternative
procedure

26. When an accused person is remanded for trial by general or district court-martial the procedure before and during trial shall be that ordered in section 2 of this Chapter, and when an accused person is remanded for trial by summary court-martial that ordered in section 3 of this Chapter. Section 1 is equally applicable to all trials by general, district and summary courts-martial.

SECTION 2.—GENERAL AND DISTRICT COURTS-MARTIAL.*Convening the Court*Convening of;
general and
district courts-
martial.

27. (A) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(n) He shall also satisfy himself that the case is a proper one to be tried by the description of court-martial he proposes to convene.

(c) The officer convening a court-martial shall appoint or detail the officers to form the court, and may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(d) The officer convening a court-martial shall send to the senior member of a court composed of British officers and to the judge-advocate or superintending officer of any other court, the original charge-sheet on which the accused is to be tried, the summary of evidence, and the order for the assembly of the court-martial.

(e) A court-martial which is convened under the provisions of the Act, and which is likely to be prolonged to form a minimum, in order that it may fall through illness or some other cause, it will seldom be necessary to convene a court-martial, as it is unusual for such a court, as if the proceedings have not been completed by another court.

It will usually be desirable, in the case of a general court-martial, to add two or more waiting officers, in order to fill the place of officers retiring on a challenge, and the same course will not unfrequently be expedient in convening a district court-martial.

Interpreter.—In almost every case an interpreter in the language of the accused person will be necessary and should be detailed. See Rule 77 and notes.

(f) *Senior member.*—This is the officer who will, unless successfully objected to, sit as president at the trial. Indian Army Act, section 77. The object of this paragraph is to enable the original charge-sheet and convening order to be annexed to the proceedings, and also to enable these officers to examine, before the court meets, the charge-sheets and summary of evidence in the different cases, so that they may have a general knowledge of the cases which are to come before the court. If any amendment in the charges appears to be required, the convening officer should be communicated with before the trial begins. See Rule 15 (c).

Where the accused pleads guilty the summary of evidence may be used for determining the sentence. Rule 43 (b). Otherwise the summary of evidence may be used at the trial for the purpose of showing that the

witness has contradicted himself or has made a particular statement; and during the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence and if there is any material variance should question the witness respecting the variance.

The summary of evidence cannot otherwise be used as evidence, and if the witness is absent, must not be read or referred to by the court so far as it relates to that witness. Great care must be taken by the members of the court not to be biased in any way by the statements in the summary of evidence, except so far as they affect the credibility of the witness by showing that he has contradicted himself, indeed, it may usually be expedient that no one but the president, or superintending officer, should refer to the summary.

Any statement of the accused contained in the summary of evidence, if not taken contrary to the directions in note to Rule 15 (b)-(n), may, and usually should, be read to the court as evidence, whether it is in favour of or against the accused.

Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings [see Appendix III, Form of Proceedings, paragraph (4)]. If the accused pleads not guilty, the summary may be destroyed, but it will usually be convenient to enclose it with the proceedings when sent to the confirming officer, it need not, however, be annexed to the proceedings unless there is a material variance between the statement of any witness in the summary and his evidence at the trial.

28. (a) If, before the accused is arraigned, the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge or otherwise, and if there are not a sufficient number of officers in waiting to take the place of those unable to serve the court shall ordinarily adjourn for the purpose of fresh members being appointed, but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

Adjournment for insufficient number of officers.

(n) If the court adjourns for the purpose of the appointment of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

(a) Under this paragraph a court, for which, say, nine members have been detailed, will not ordinarily begin the trial with less than nine although they may proceed, unless reduced below the legal minimum. The court should always adjourn, unless there are strong reasons against it.

Notwithstanding the proviso to Indian Army Act, section 65 (2), a general court-martial, regarding which no order under section 59 has been made and which is reduced to six or five officers, cannot proceed under this paragraph. This is because the trial has not yet commenced.

Fresh members—The court will adjourn under the circumstances mentioned in paragraph (a) of this rule unless, of course, there are sufficient waiting members to take the place of those unavailable to serve. See also note (v) to Rule 34. After the trial has once begun fresh members cannot be appointed in any circumstances.

29. (A) An officer is not eligible for serving on a court-martial if he is not subject to military law.

Ineligibility and disqualification of officers for court-martial.

(n) An officer is disqualified for serving on a general or district court-martial if he—

- (i) is the officer who convened the court or
- (ii) is the prosecutor or a witness for the prosecution; or
- (iii) investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded or was the squadron battery, company, or other

commander, who made preliminary inquiry into the case; or

(iv) is the commanding officer of the accused, or of the corps to which the accused belongs; or

(v) has a personal interest in the case.

(i) *Eligible* is used with reference to an officer being subject to military law. It refers, in point of fact, to the status of the officer and involves no personal considerations. Under the Indian Army Act there is no minimum length of service as a qualification for membership of any court-martial, but care should nevertheless be taken not to appoint officers unless they have the necessary experience.

(ii) *Disqualified*, on the other hand, is used with reference to personal disqualification on the part of an officer.

Except as provided by Rule 33, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial.

(iii) *Investigated the charges*.—The officer who investigated is usually the commanding officer of the accused when he is not, he is equally excluded by these words. He has been defined as meaning the officer who, in a judicial capacity, sifted the evidence in such a way as to acquaint him with, and lead him to form a conclusion upon the merits of the case, and does not include an officer through whose hands the charges passed merely formally or ministerially.

(v) *Personal interest*.—This will extend to even a remote or very small interest. For example, in a charge relating to the misapplication of a sum, however small, belonging to the regimental mess, every officer of that mess has a personal interest and is therefore disqualified. A remote or even a merely technical interest has been held to disqualify a person in a judicial position. For example, a person who holds as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money. Where a new trial is ordered, no officer should be a member of the court who sat on the court at the previous trial.

Composition of
court-martial.

30. A general court-martial shall be composed, as far as possible, of officers of different corps or departments, and in no case exclusively of officers of the corps or department to which the accused belongs.

There is no similar restriction as to the composition of district court-martial which may therefore, when necessary, be composed wholly of officers of the corps or department to which the accused belongs—but where possible they should not be so composed.

Procedure at Trial.—Constitution of Court.

31. (a) On the court assembling, the order convening the court shall be read, and also the names, rank and corps of the officers appointed to serve on the court; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted (that is to say)—

(i) that, so far as the court can ascertain, the court has been convened in accordance with the Act, and these rules;

(ii) that the court consists of a number of officers not less than the legal minimum, and, save as mentioned in Rule 28, not less than the number detailed;

(iii) that each of the officers so assembled is eligible and not disqualified for serving on that court-martial;

(iv) that a superintending officer has, when necessary, been appointed.

(b) The court shall, further, if it is a general or district court-martial to which a judge-advocate has been appointed,

Inquiry by
court as to legal
constitution.

Investigation of Charges and Trial by Court-Martial. 195

ascertain that the judge-advocate is duly appointed and is not disqualified for acting at that court-martial.

(c) The court, if not satisfied on the above matters, shall report their opinion to the convening authority, and may adjourn for that purpose.

It is of great importance for the court, as far as lies in their power, to ascertain that they have jurisdiction.

In addition to the requirements of this rule the court must satisfy themselves that it is composed in accordance with the order convening the court.

(1) See Appendix III, Form of Proceedings, paragraph (1).

(2) The court, in considering whether they are convened in accordance with the Indian Army Act and Rules, can only look at the order convening the court and cannot inquire whether the officer issuing the order has or has not a warrant which justifies the issue of the order.

(3) *Legal minimum*—See Indian Army Act, sections 57, 58 and 59. In counting the number of officers the president is included.

(4) As to eligibility and non-disqualification, see Rule 29 and note.

(5) See Indian Army Act, section 73, and Rule 82.

32. (1) The court, when satisfied on the above matters, shall satisfy themselves in respect of each charge about to be brought before them—

Inquiry by court as to amenability of accused and validity of charge.

(i) that it appears to be laid against a person amenable to military law, and to the jurisdiction of the court and

(ii) that each charge discloses an offence under the Act and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(2) The court, if not satisfied on the above matters, shall report their opinion to the convening authority and may adjourn for that purpose.

(3) *Satisfy themselves*—See Appendix III, Form of Proceedings, paragraph (1).

(4) *Amenable to military law*—As to the Indian Army Act, see section 2 of that Act and Part I, Chapter I, paragraphs 9 and 10.

The inquiry by the court under this and the preceding rule is not required to be, but may be, in closed court.

Procedure at Trial.—Challenge and Swearing.

33. When the court have satisfied themselves as to the above facts, the prosecutor, who must be a person subject to military law, shall take his place, and the court shall cause the accused to be brought before the court.

Appearance of prosecutor and accused.

The duty of appointing the prosecutor devolves on the convening officer who ordinarily selects the adjutant of the accused person's regiment. But the convening officer should not appoint himself to be prosecutor and the prosecutor cannot confirm the finding and sentence of the court. In trials by general court-martial, and in complicated cases, a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duties, so that he may be enabled fully to master the case. In ordinary cases one of the officers mentioned in Rule 27 (a) (iii) may suitably be detailed to act as prosecutor.

As to counsel, see Rules 82 to 83.

34. The names of the president and members of the court shall then be read over to the accused and he shall be asked, as required by section 80 of the Act, whether he objects to be tried by any officer sitting on the court. Any such objections

Proceedings for challenges members court.

shall be disposed of in accordance with the provisions of section 80 of the Act; provided that—

(i) The accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(ii) The accused may call any person to give evidence in support of his objection.

(iii) If more than one officer is objected to, the objection to each officer shall be disposed of separately, and the objection to the lowest in rank shall be disposed of first, and on an objection to an officer, all the other officers present shall vote on the disposal of such objection notwithstanding that objections have been made to any of those officers.

(iv) When an objection to an officer is allowed that officer shall forthwith retire, and take no further part in the proceedings.

(v) When an officer objected to retires, and there are any officers in waiting, the vacancy shall be forthwith filled by one of the officers in waiting being directed to serve in lieu of the retiring officer. If there is no officer in waiting available, the court shall proceed as directed by Rule 28.

(vi) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

This rule must be read in connection with section 80 of the Indian Army Act. For form see Appendix III, Form of Proceedings, paragraph (2).

(i) The accused cannot object to the court collectively, but must make each objection separately. If the accused persists in objecting to the court collectively the court should treat the objection as made to all the members individually, and should deal with such objections in the usual way. The court may be closed to consider each objection. The objections together with the statements of any witnesses examined are to be entered in the proceedings. The accused has no right to object to the prosecutor, judge advocate or superintending officer, as they do not form part of the court.

An officer objected to on the score of personal enmity, prejudice, or malice, or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request, and be permitted to withdraw.

(ii) Objections to individual members under this rule are quite distinct from a plea to the jurisdiction of the court, as to which see Rule 41.

(iii) The witnesses cannot be examined on oath as the court is not yet sworn, but Rule 127 and notes thereto will substantially apply.

(iv) The object of the latter part of the paragraph is to secure a sufficient number of officers to determine the objections.

(Other officers)—This excludes an officer from voting on his own case present, *i.e.*, who have not retired on the objection being allowed.

(v) Objections are to be decided as directed in section 80 (3) of the Act.

(i) *Directed to serve*.—This "prescribes" the manner of filling a vacancy. It is the duty of the president to appoint one of the officers in waiting to fill a vacancy. If the president is himself successfully objected to, the senior remaining member will take his place (Indian Army Act, section 77) and will then proceed to fill the vacancy in the court in the manner indicated above.

(ii) *Proceed as directed by Rule 28*.—That is, the court, if reduced in number below the legal minimum, must adjourn for the purpose of the appointment of fresh members, and though not so reduced should ordinarily adjourn unless of opinion that in the interests of justice and for the good of the service, it is inexpedient to adjourn.

(vi) Inasmuch as this paragraph directs that the eligibility and absence of disqualification of an officer filling a vacancy are to be ascertained by the court so in the case of other members the court will ascertain that he is eligible and not disqualified under Rule 29 before the accused is asked whether he objects to him, but as this does not form part of the

recorded proceedings it may be done by the court in the case of officers in waiting at the same time as the inquiry under Rule 31, before the accused is brought before them. The accused will be asked whether he objects to the new officer, and if he does, the objection will be dealt with, if he is junior to any other officer objected to, immediately; if not, after the objections to any other officers who are junior to him have been disposed of. He will, though objected to, have to vote on the objection to any other officer who is junior to him. The court should always, in a doubtful case, allow an objection, as it is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

35. As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, an oath or affirmation shall be administered to every member in one of the following forms or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience. Swearing or affirming of members

Form of oath.

" You do swear that you will duly administer justice, according to the Indian Army Act, without partiality, favour or affection, and if any doubt shall arise, then, according to your conscience, the best of your understanding, and the custom of war in the like cases; and that you will not divulge the sentence of this court-martial until it shall be published by authority, and, further, that you will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law. So help you God "

The first person may, when necessary, be substituted for the second in this form of oath and the words " So help you God " omitted or varied

Form of affirmation.

" I solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Indian Army Act, without partiality, favour or affection, and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of this court-martial until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or court-martial, in due course of law "

Christians and Sikhs are generally sworn, the former on the New Testament or some book containing it, and the latter on the Granth. Hindus and Muhammadans are generally affirmed.

As to the person to administer the oath or affirmation see Rule 37 and notes thereto

As to swearing the court to try several persons, see Rule 75

The oath is usually administered to Christians as follows —

The person to be sworn will take the book in his right hand unopened. The person administering the oath will repeat the oath, and on the repetition being ended, the person to be sworn will say the words " So help me God ", and kiss the book. The words of the oath should be said with distinctness and solemnity by the person administering it

The oath may be administered to each member separately or to two or more together

Affirmations are repeated by the person making affirmation after the person administering it. The Hindustani translation of the form of affirmation given above is as follows:—

Its translation in toPushin is as follows —

Sikhs are sworn as follows —

The "Granthi" or other person administering the oath holds a copy of the Sikh scriptures (the Granth) in his hands and the person to be sworn also places his hands upon it. The latter then repeats after the former the words of the oath. This begins —

"Main Sri Gurā Granth Sāsbh jī kī sugand khātā hūn kī malā tarāī dāī" and proceeds as in the Hindustani translation of the form of affirmation.

Every member—This includes the president.

Such other form to the same purport—This, in addition to providing for the case of persons who are neither Christians, Sikhs, Hindus nor Muhammadans, will permit of the Scots form of oath being administered to any Christian who prefers it to the form given in the rule. A person desiring to be sworn in the Scots form will swear standing and holding up his right hand, and the oath will be in these terms "I swear by Almighty God, as I shall answer to God at the Great Day of Judgment, that . . ." No Bible is held in the hand, or kissed.

In due course of law—The oath or affirmation taken by members of the court implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole, and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath or affirmation, "unless required to give evidence thereof, etc.", only applies to such cases as those where members of the court are charged individually with partiality or bribery, and thus in a court of justice or a court-martial it would, or might be necessary to make disclosures regarding individual votes to the court trying members so charged.

36. After the members of the court are all sworn or have made affirmation, an oath or affirmation shall be administered to the following persons or such of them as are present at the court-martial, in such of the following forms as shall be appropriate, or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed:—

(A) *Judge-advocate or superintending officer.*

Form of oath.

"You do swear that you will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law; and that you will not, unless it be necessary for the due discharge of your official duties, divulge the sentence of this court-martial until it shall be published by authority. So help you God."

Swearing or affirming of judge-advocate and other officers.

The first person may, when necessary, be substituted for the second in this form of oath, and in all other forms prescribed in this rule, and the words "So help you God" omitted or varied.

Form of affirmation.

"I solemnly affirm in the presence of Almighty God that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law; and that I will not, unless it be necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it shall be published by authority."

(a) *Officer attending for the purpose of instruction.*

Form of oath.

"You do swear that you will not divulge the sentence of this court-martial until it shall be published by authority, and, further that you will not disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law. So help you God"

Form of affirmation.

"I solemnly affirm in the presence of Almighty God that I will not divulge the sentence of this court-martial until it shall be published by authority, and, further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

(c) *Shorthand writer*

Form of oath

"You do swear that you will truly take down to the best of your power the evidence to be given before this court-martial and such other matters as you may be required, and will, when required, deliver to the court a true transcript of the same. So help you God."

Form of affirmation

"I solemnly affirm in the presence of Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial, and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same."

(d) *Interpreter*

Form of oath

"You do swear that you will faithfully interpret and translate, as you shall be required to do, touching the matter

before this court-martial; and that you will not divulge the sentence until it shall be published by authority; and further, that you will not disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law. So help you God."

Form of affirmation.

I solemnly affirm in the presence of Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial: and that I will not divulge the sentence until it shall be published by authority and further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

The notes to Rule 35 apply, *mutatis mutandis*, to this Rule.

The interpreter may be required to be present during the time the court is closed (see Rule 69) and he consequently takes the oath of secrecy. This differs from the procedure under the (British) Army Act, where the interpreter cannot be present when the court is closed, and where his oath therefore contains no such obligation.

Persons to
administer
oaths and
affirmations.

37. All oaths and affirmations shall be administered by a member of the court, the judge-advocate, the superintending officer or some other person empowered by the court to administer such oath or affirmation.

Indians are generally sworn by a person professing their religion who may be either a member of the court or a person empowered by the court under this rule. In the case of Sikhs this person is generally a *Groniât* who attends in court with a *Gronth* for the purpose of swearing Sikh members and witnesses.

Affirmations may be administered by any of the persons mentioned in this Rule. Their being of the same religion as the person affirmed is immaterial.

When a court-martial is composed of British officers it will generally be convenient for the judge-advocate to administer the oath or affirmation to the president and members, or if there is no judge-advocate, for the president to first administer it to the members and then be himself sworn or affirmed by one of them.

Prosecution, Defence and Summing-up.

Arraignment of
accused

38. (1) After the members of the court and other persons are sworn or affirmed as above-mentioned, the accused shall be arraigned on the charges against him.

(2) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

The accused is usually arraigned by the president, the superintending officer or the judge-advocate. When two or more persons are tried together for the same offences, each is separately arraigned.

(3) The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president, judge-advocate or superintending officer, who will lay it before the court immediately before the arraignment and it will then be annexed to the proceedings.

If any charge appears to the prosecutor to require amendment, he should communicate with the convening officer before the trial begins.

Objection by
accused to
charge

39. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

See Rules 18 to 21. For Form see Appendix III, Form of Proceedings, paragraph (3). An objection to the jurisdiction of the court must be raised by way of special plea, Rule 41. If it appears that the accused is, by reason of insanity, unfit to take his trial, the court will find the fact specially, and he will be dealt with as provided in Rule 131.

40. (A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake. Amendment of charge.

(B) If on the trial of any charge it appears to the court at any time before they have begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the accused.

(C) A mistake in name or description will only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that he is not prejudiced in his defence by the mistake having been made.

(D) The court may act under this paragraph whether the objection to the charge is taken by the accused or the judge-advocate, or by a member of the court, and either before or after the arraignment of the accused. See Rules 32 and 39.

The witnesses—That is, the witnesses on the substance of the charge, not witnesses as to objections to the officers, or with respect to a special plea to the jurisdiction.

If the addition, omission, or alteration can be met by means of a special finding under Rule 51 (as, for instance, by omitting some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended, but if the date is material or if the charge appears not to disclose an offence under the Indian Army Act, or if any addition requires to be made to the charge, it will be safer for the court to adjourn and apply for the amendment of the charge.

41. (A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court; and if he does so, and the court consider that anything stated in such plea shows that the court have not jurisdiction, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the accused and reply by the prosecutor in reference thereto. Special plea to the jurisdiction.

(B) If the court overrule the special plea, they shall proceed with the trial.

(C) If the court allow the special plea, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn, such decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused or order the accused to be released.

(D) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority and may adjourn for that purpose, or may record a special decision with respect to such plea, and proceed with the trial.

(E) *May offer a special plea to the general jurisdiction of the court*—A plea to the general jurisdiction, that is, to the right of the court generally to try the accused on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the accused is brought before the court. Under the former he may plead, for example,

before this court-martial; and that you will not divulge the sentence until it shall be published by authority; and further, that you will not disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law. So help you God."

Form of affirmation.

"I solemnly affirm in the presence of Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial; and that I will not divulge the sentence until it shall be published by authority; and further, that I will not disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

The notes to Rule 35 apply, *mutatis mutandis*, to this Rule

The interpreter may be required to be present during the time the court is closed (see Rule 63) and he consequently takes the oath of secrecy. This differs from the procedure under the (British) Army Act, where the interpreter cannot be present when the court is closed, and where his oath therefore contains no such obligation

Persons to
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37. All oaths and affirmations shall be administered by a member of the court, the judge-advocate, the superintending officer or some other person empowered by the court to administer such oath or affirmation.

Indians are generally sworn by a person professing their religion who may be either a member of the court or a person empowered by the court under this rule. —In the case of Sikhs this person is generally a *Grantha* who attends in court with a *Grantha* for the purpose of swearing Sikh members and witnesses

Affirmations may be administered by any of the persons mentioned in this Rule. Their being of the same religion as the person affirmed is immaterial

When a court martial is composed of British officers it will generally be convenient for the judge-advocate to administer the oath or affirmation to the president and members, or if there is no judge-advocate, for the president to first administer it to the members and then be himself sworn or affirmed by one of them

Prosecution, Defence and Summing-up

Arraignment of
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(2) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

The accused is usually arraigned by the president, the superintending officer or the judge-advocate. When two or more persons are tried together for the same offence, each is separately arraigned

(3) The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president, judge-advocate or superintending officer, who will lay it before the court immediately before the arraignment and it will then be annexed to the proceedings

If any charge appears to the prosecutor to require amendment, he should communicate with the convening officer before the trial begins

Objection by
accused to
charge.

39. The accused, when required to plead to any charge may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

where the accused pleads guilty, but says that he "did not intend to do it" or words to that effect, so if the accused pleads guilty to two or more alternative charges, the officer conducting the proceedings should point out that he can only be guilty of one.

Generally, the officer conducting the proceedings has, under this rule, the duty of advising the accused to withdraw a plea of guilty, if it appears from the summary of evidence that he ought to plead not guilty.

If the accused pleads guilty, a statement that the requirements of Rule 42 (a) have been complied with must be recorded. See Form of Proceedings, Appendix III, paragraph (3).

Difference in the procedure.—This is shown by Rule 44. Under that rule the accused, though able to call witnesses as to character, cannot call them in extenuation of the offence, except by leave of the court under Rule 44 (f) to prove what he alleges in mitigation of punishment. Consequently if he wishes, though admitting the offence, to show extenuating circumstances, he must plead not guilty, and cross-examine the witnesses for the prosecution, or call witnesses on his own behalf, to prove the extenuating circumstances.

It must be recollected that there is nothing untrue in an accused person pleading not guilty, even though he committed the offence, as the plea merely amounts to an expression of desire to have a formal trial.

For example, if a man admits that he struck his non-commissioned officer, but wishes to show that it was done under circumstances of very great provocation, and does not therefore deserve severe punishment, he must plead not guilty, as if he pleads guilty he will not be able, either by cross-examination of the prosecutor's witnesses or by calling witnesses on his own behalf, to show the existence of such provocation, save as above-mentioned under Rule 44 (f).

As to procedure where it appears from subsequent proceedings that the plea of guilty was entered under a misapprehension, see Rule 44 (v).

43. (A) The accused, at the time of his general plea of *Plea in bar.* "Guilty" or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

- (1) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial or has been dealt with summarily under section 20 or 22 of the Act for the offence; or
- (2) the offence has been pardoned or condoned by competent military authority; or
- (3) the time which has elapsed between the commission of the offence and the beginning of the trial is more than three years, and the limit of time for trial is not extended under section 67 of the Act.

(b) If he offers such plea in bar, the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered, and hear any address made by the accused and the prosecutor in reference to the plea.

(c) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(d) If the finding that the plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(e) If the court find that the plea in bar is not proved, they shall proceed with the trial, and the said finding shall be subject to confirmation like any other finding of the court.

that the court is improperly constituted in respect of the number of the members, or that he is not amenable to the court, either as not being subject to military law or not subject to that description of court; as, for instance, in the case of a commissioned officer being brought before a district court-martial.

A plea relating to the particular charge, and rising the defence of previous conviction or acquittal by a court-martial or criminal court, summary punishment by the commanding officer, pardon of the offence or its condonation by the deliberate act of some superior authority or of the lapse of more than three years since the date of the offence (Indian Army Act, section 67) will be raised by way of plea in bar of trial, under Rule 43.

Evidence, when necessary, is heard in support of a plea to the jurisdiction, and if taken, must be taken on oath or affirmation like the evidence of other witnesses.

(a) The confirmation of the finding, after a plea to the jurisdiction is overruled, will, without any special mention, necessarily have the effect of confirming the decision of the court overruling the plea. If, on the other hand, the confirming officer thinks that the plea to the jurisdiction, although it was overruled is valid, he must refuse to confirm the finding of the court, but inasmuch as the court must in that case be considered as having had no jurisdiction to try the accused, the accused, in strict law, will not have been tried at all, and can, therefore, still be tried for the alleged offence.

(c) If the court allow the plea, the convening officer cannot overrule the finding, inasmuch as to do so would be to compel the court to try the accused and thus render its members liable to a possible action for damages, after the expression of their own opinion that they had no jurisdiction. But the convening officer may convene another court.

(d) *May record a special decision.*—This in effect transfers the question to the decision of the confirming authority, who should act merely as if the plea had been overruled. See note to (b).

General plea
"Guilty" or
"Not guilty."

42. (A) If no special plea to the general jurisdiction of the court is offered, or if such plea being offered, is overruled, the accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(n) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but, before it is recorded, the officer conducting the proceedings, on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead not guilty.

(a) *Plead intelligibly.*—If the accused pleads in some language not understood by the court or inarticulately he will not plead intelligibly, and a plea of "Not guilty" will be entered.

(a) *Officer conducting the proceedings.*—See Rule 64.

Understand the nature of the charge.—This direction is to prevent the accused pleading guilty under a misapprehension. For instance, a man charged with wilfully injuring Government property may, under a misapprehension, plead guilty, because the property has been actually injured, though not wilfully. In such a case the officer conducting the proceedings must explain to him that if he did not do it wilfully, he must plead not guilty. So, again, on a charge for desertion, the plea "Guilty, but I intended to return" amounts to a plea of "Not guilty", as the intention not to return is generally an essential element in the offence of desertion.

A plea of "Guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned upon a charge of larceny by neglect a number of articles, who pleads guilty in respect of some of these articles only, must be taken to have pleaded "Not guilty" as regards the remaining articles. An accused person arraigned upon a charge of receiving property knowing it to have been stolen, who pleads guilty "except that he did not know it was stolen", must be dealt with as having pleaded not guilty. So as regards any act of which the intention is an element,

where the accused pleads guilty, but says that he "did not intend to do it" or words to that effect, so if the accused pleads guilty to two or more alternative charges, the officer conducting the proceedings should point out that he can only be guilty of one.

Generally, the officer conducting the proceedings has, under this rule, the duty of advising the accused to withdraw a plea of guilty, if it appears from the summary of evidence that he ought to plead not guilty.

If the accused pleads guilty, a statement that the requirements of Rule 42 (a) have been complied with must be recorded. See Form of Proceedings, Appendix III, paragraph (3).

Difference in the procedure.—This is shown by Rule 44. Under that rule the accused, in extenuating circumstances, cannot call them in court under Rule 44 (v) to prove extenuating circumstances. Consequently, if he wishes to do so, he must call the witnesses for the prosecution to prove the extenuating circumstances.

It must be recollected that there is nothing untrue in an accused person pleading not guilty, even though he committed the offence, as the plea merely amounts to an expression of desire to have a formal trial.

For example, if a man admits that he struck his non-commissioned officer, but wishes to show that it was done under circumstances of very great provocation, and does not therefore deserve severe punishment, he must plead not guilty as if he pleads guilty he will not be able, either by cross-examination of the prosecutor's witnesses or by calling witnesses on his own behalf, to show the existence of such provocation, save as above mentioned under Rule 44 (v).

As to procedure where it appears from subsequent proceedings that the plea of guilty was entered under a misapprehension, see Rule 44 (v).

43. (A) The accused, at the time of his general plea of "Guilty" or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

- (1) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial or has been dealt with summarily under section 20 or 22 of the Act for the offence; or
- (2) the offence has been pardoned or condoned by competent military authority; or
- (3) the time which has elapsed between the commission of the offence and the beginning of the trial is more than three years, and the limit of time for trial is not extended under section 67 of the Act.

(b) If he offers such plea in bar, the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered, and hear any address made by the accused and the prosecutor in reference to the plea.

(c) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(d) If the finding that the plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(e) If the court find that the plea in bar is not proved, they shall proceed with the trial, and the said finding shall be subject to confirmation like any other finding of the court.

not, by pleading guilty to the lesser offence, to escape punishment for the graver one

(a) and (b) Any statement—If it appears from this statement or other wise that the accused did not understand the effect of his plea of "Guilty", it will be the duty of the court to record a plea of "Not guilty", and to proceed with the trial (See notes to Rule 42) Or again, if he alleges very great provocation for the offence, it may be desirable to record a plea of "Not guilty", in order to allow the existence of such provocation to be proved in the ordinary way.

If a court fail to observe this rule and treat such a plea as mentioned in the note of Rule 42 (a), in the case of desertion as a plea of "Guilty", the confirming officer should refuse confirmation; he can then order a new trial. If he confirms, the whole proceedings are nevertheless invalid.

In the case of a plea of "Guilty", the accused will always be asked whether he has any witnesses to call as to character—see (c).

For form see Appendix III, Form of Proceedings, paragraph (4)

If evidence is taken under (a), the accused can cross-examine the witnesses both in extenuation of the offence with a view to the mitigation of punishment, and as to character. See Rule 46, and for form, Appendix III, Form of Proceedings, paragraph (4)

(c) It will be observed that the accused cannot, except by permission of the court under (f), call witnesses in extenuation of the offence and consequent mitigation of punishment

(f) The court should always, if the accused requests it, allow witnesses to be called, to prove any statement made by him in mitigation of punishment.

45. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty" and plead "Guilty", and in such case the court will at once subject to a compliance with Rule 42 (a) record a plea and finding of "Guilty", and shall so far as is necessary, proceed in manner directed by Rule 44

Withdrawal of plea of "Not guilty"

If the accused proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal and of the difference in the procedure in the same manner as if he pleaded guilty under Rule 42.

46. After the plea of "Not guilty" to any charge is recorded, the trial shall proceed as follows —

Plea "Not guilty" and case for the prosecution.

(a) The prosecutor may, if he desires, make an opening address.

(a) The evidence for the prosecution shall then be taken

(c) If it should be necessary for the prosecutor to give evidence for the prosecution on the facts of the case, he shall give it after the delivery of his address, and he must be sworn and give his evidence in detail.

(n) He may be cross-examined by the accused and afterwards may make any statement which might be made by a witness on re-examination.

For form see Appendix III, Form of Proceedings, paragraph (5)

(c) In cases of any complication, the prosecutor should always make an opening address for the purpose of explaining the charge, and enabling the court better to follow the evidence. This is the only object of the address. As a rule the address of the prosecutor should be in writing. See further Rule 66 and note

(a) As to the evidence see Rules 125 to 129. The evidence will be taken by question and answer, Rule 127 but recorded as directed in Rule 73 and note thereto. All facts essential to constitute the offence charged must be proved, e.g. on a charge of making false accusations etc. It is necessary to prove—

(1) that the accusation was made against a person subject to military law by the accused

(2) that it was false;

(3) that the accused made it knowing it was false

Respecting the duty of the officer conducting the proceedings see Rule 66 and note

(c) The prosecutor should never himself give evidence for the prosecution *before* the finding unless it be to prove a date or other formal matter, or to produce documents; but even formal matters should not be left to be proved by him, if it can possibly be triped. The production of documents which are in his possession is not open to the same objection.

The only possible exception to the rule of the prosecutor not giving evidence will be occasionally on active service, where the trial cannot be postponed, and the same officer is a material witness and also the only available officer for the duty of prosecutor. In these exceptional cases, it is essential that his sworn statements as a witness should be kept quite distinct from his statements made as prosecutor. Consequently he must give his evidence before any other witness, and in detail, and must not, after delivering an address, be allowed to swear generally to the statements contained in it.

Documentary evidence will be read by the judge-advocate, the president, the superintending officer or some member of the court, and will be entered on the proceedings.

When counsel appears on behalf of the prosecutor, (c) and (d) do not apply. See Rule 83.

Close of case for the prosecution and procedure for defence where accused does not call witnesses.

47. (1) At the close of the evidence for the prosecution, the accused shall be asked if he intends to call any witnesses to the facts of the case.

(2) If the accused does not state that he intends to call witnesses to the facts of the case the procedure shall be as follows:—

(a) The prosecutor may address the court a second time for the purpose of summing up the evidence for the prosecution.

(b) The accused shall be asked if he has anything to say in his defence and may address the court in his defence.

(c) The accused may call witnesses as to his character.

(d) The prosecutor may produce, in reply to the witnesses as to character, proof of former convictions, and entries in the defaulter's book, but he may not again address the court.

(1) The question to the accused as to the calling of witnesses will be put by the judge-advocate, or, if there is none, by the president or superintending officer. The accused must be informed of the difference between witnesses to facts and witnesses as to character only. In particular it must be explained that if he wishes to produce any evidence in extenuation of the offence with a view to the mitigation of punishment, he will not be entitled to do so if he only calls witnesses as to character.

Witnesses to the facts of the case.—Every witness, except a witness to character only, is a witness to the facts of the case. Accordingly a witness as to extenuating circumstances is a witness to the facts of the case. See also Rule 53 as to statement of accused.

(2) (i) The observations with respect to the opening address of the prosecutor (see note to Rule 66) apply equally to his second address. In summing up the evidence the prosecutor must confine his remarks to the evidence. He must not keep back or gloss over any weak points of the evidence of the prosecution, or the strong points of the evidence for the defence; in fact, he should understate rather than overstate that view of the facts which it is his duty to bring before the court on behalf of the prosecution; still less must he state any new fact relating to the case which has not been given in evidence. Any deviation in these respects on the part of the prosecution, or any want of moderation, may lead to the proceedings being invalidated. The court should, so far as possible, stop the prosecutor transgressing in any of these respects. The accused, on the other hand, has the privilege of making statements in his address unsupported by evidence, and when those statements are made of his own knowledge they must be dealt with as evidence, though not on oath. See also note to Rule 50.

(ii) This evidence can only be adduced before the finding in cases where the accused calls witnesses as to character or obtains from the prosecutor's witnesses evidence of his good character.

For form, see Appendix III, Form of Proceedings, paragraph (6).

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48. If the accused states that he intends to call witnesses to the facts of the case, the procedure shall be as follows:— Defence where accused calls witnesses.

(A) The accused shall be asked if he has anything to say in his defence, and may address the court in his defence.

(B) The accused may call his witnesses, including witnesses as to character.

(C) The prosecutor may, in special cases, with the permission of the court, call witnesses in reply.

(D) After the evidence of all the witnesses for the defence has been taken, the accused may again address the court, and the time at which such second address is allowed is in these rules referred to as the time for the second address of the accused.

(E) The prosecutor shall be entitled to address the court in reply.

For form, see Appendix III, Form of Proceedings, paragraph (7)

(1) The utmost liberty consistent with the interests of parties not before the court, and with the dignity of the court itself, should be allowed to the accused in making his defence (see Rule 66); and the court should, if necessary, adjourn to allow him time for its preparation. As to friend of accused and counsel, see Rules 81-83

(2) The accused cannot give evidence on oath or affirmation as there is no provision of Indian military law corresponding to Rule 89 of the Rules of Procedure under the (British) Army Act

49. (A) The judge-advocate if any, shall, unless both he and the court think a summing-up unnecessary, sum-up in open court the whole case Summing-up by judge-advocate.

(B) After the judge-advocate has spoken, no other address shall be allowed.

(A) The summing-up of the judge-advocate ought, like that of a judge to a jury, to be perfectly impartial. In simple cases a summing-up is unnecessary but even where the facts are simple, difficult questions may sometimes arise as to the particular offence which the acts constitute in law, and in that case the judge-advocate should give his opinion on the legal point. The judge-advocate has, it will be observed, a right to sum-up, whenever he considers summing-up necessary. The summing-up should invariably be in writing.

If the summing-up is unnecessary, an entry to that effect must be made in the proceedings. See Appendix III, Form of Proceedings, paragraph (8).

Finding and Sentence.

50. (A) The court shall deliberate on their finding in closed court In Constitutional cases.

(B) The opinion of each member of the court shall be taken separately on each charge

(A) Closed court.—See Rule 69

The president, or superintending officer, may commence the deliberation on the finding by a statement of the questions to be considered, and the order in which they are to be considered and the bearing of the evidence on those questions, and other members of the court may correct the evidence, and the truth or otherwise of the defence

The great points for all the members to keep before their minds are (1) that according to one of the fundamental maxims of law a man is to be presumed innocent till he is proved guilty, and (2) that the court is to find according to the facts proved in evidence and to the law. They must carefully separate mere statements made by the prosecutor from facts proved by the respective witnesses. Some weight must be allowed to a statement of the accused which is corroborated by evidence, especially if he has been contradicted by a witness who might have given evidence on the point

Where the proceedings are voluminous, the judge-advocate should prepared with such notes as may assist the members in referring to particular part of the evidence. He will not offer any opinion on legal points (See Rule 91)

It is competent to the court, if they think fit [see Rule 123 (d)] to or re-call a witness for the purpose of putting any question essential, but any such witness must be examined in the presence of parties, and all questions put to him, whether by a member of the court, the prosecutor, or accused, will be put through the officer conducting proceedings

(8) As to taking opinions, see Rule 73 and note.

The opinions will be taken separately on each charge, and the court if they think that the offence stated in any charge is not proved, acquit the accused on that charge, irrespective of any other charge; where the charges are *alternative*, the conviction under one necessarily involves an acquittal under the other charges

Form and record of finding.

51. (1) The finding on every charge shall be recorded, except as mentioned in these rules, shall be recorded simply as a finding of "Guilty", or of "Not guilty", or of "guilty and honourably acquit him of the same".

(b) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty", record a special finding

(c) The special finding may find the accused guilty of the charge, subject to the statement of exceptions or variations specified therein.

(d) Where the court are of opinion as regards any charge that the facts proved do not disclose an offence under the Act, the court shall acquit the accused of that charge.

(e) If the court doubt as regards any charge whether the facts proved show the accused to be guilty or not of an offence under the Act, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, and if necessary, adjourn for that purpose.

(f) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge; but if the court think that the facts so proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, then they may, either before recording a finding on the charges refer to the confirming authority for an opinion, and if necessary, adjourn for the purpose, or they may record a special finding, stating the facts which they find to be proved and stating that they doubt whether those facts constitute in law the offence in such one or another of the alternative charges as are specified in the finding.

(g) For form, see Appendix III, Form of Proceedings, paragraphs (9) and (10) The finding of honourable acquittal may be recorded in the case of non-commissioned officers and soldiers as well as officers, but is not to be recorded as a matter of course upon an acquittal. It is incorrect to honourably acquit a person on a charge not affecting his honour

(h) For form of special finding, see Appendix III, Form of Proceedings, paragraph (9), and for form of acquittal, paragraph (10) in case of

immaterial variation, the finding may simply be recorded as "Guilty", as, for example, if the accused is found to have lost his regimental necessaries on the 25th, and not on the 26th of August, or to have lost two pairs of boots, and not one pair of boots the variation is immaterial, and he may simply be found guilty of the charge.

(c) Thus, if the court find that the facts stated in the charge are only proved in part, they may find the accused guilty, subject to exceptions or variations. The facts, however, which they find to be proved, subject to the exceptions or variations, must amount to the substance of the offence actually charged, otherwise the court should acquit the accused. Thus, if he is charged with being absent without leave, and the particulars specify an absence from the 20th to the 30th of June, and the evidence prove an absence from the 21st to the 30th of June, the court may find the accused guilty with the variation of the 21st for the 20th. But if the evidence proves an absence from the 20th to the 30th of July, the difference is so material as to amount to a new charge, and the court must acquit the accused and he can be tried on the new charge for the absence in July. See Rule 20 (D), note.

(d) If, for example, a man is charged with dishonestly receiving, knowing it to be stolen, the property of a person subject to military law, and the court are of opinion that although the property had actually been stolen, the accused was unaware of the fact, they must acquit him, inasmuch as the act of receiving stolen property, apart from guilty knowledge, would not amount to an offence.

(e) This paragraph provides that where the court doubt as to whether the facts proved constitute in law the offence charged, the court may refer to the confirming authority. For instance, if, on a charge under section

(f) The special finding before mentioned relate only to the particulars in the charge. A special finding can in no case, (except under section 85 of the Indian Army Act) alter the statement of the offence in the charge, but under this paragraph, if there are alternative charges, and the court doubt whether the facts proved amount in law to one charge or the other, and they do not think it advisable to refer to the confirming authority for an opinion, they can record a special finding, and thus leave it to the confirming authority under Rule 60 (i) to determine whether the facts found by the court constitute in law the one offence or the other.

The only other description of special finding which affects the statement of the offence is one not mentioned in the rules, but allowed by Indian Army Act, section 85. That section enables a person charged with an offence mentioned in the first column of the table at the end of this note to be found guilty of the offence of a similar character mentioned opposite to that offence in the second column of the table, where the evidence shows that the latter offence, and not the precise offence charged, has been in fact committed.

TABLE.

A person charged with	May be found guilty of
(a) Desertion	Attempting to desert or of being absent without leave.
(b) Attempting to desert	Desertion or of being absent without leave.
(c) Any of the following offences specified in section 51 of the Indian Army Act, viz., theft, dishonest misappropriation or conversion to his own use of property entrusted to him, or dishonestly receiving or retaining property in respect of which any of these offences has been committed, knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted.	Any other of these offences with which he might have been charged.

A person charged with	May be found guilty of
(d) A civil offence tried under section 41 of 42 of the Indian Army Act.	Any offence of which he might have been convicted if the provisions of the Criminal Procedure Code were applicable.
(e) Any other offence committed under circumstances involving a more severe punishment	The same offence as being committed under circumstances involving a less severe punishment.
(f) Any offence under the Indian Army Act	An attempt to commit, or abetment of, that offence

For such findings as are referred to in (d), see Code of Criminal Procedure, sections 237 and 238

Procedure on acquittal.

52. If the finding on all the charges is "Not guilty" the president shall date and sign the finding and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate or superintending officer, if any, shall be at once transmitted for confirmation

This differs from the procedure under the (British) Army Act where an acquittal is announced in open court and the accused forthwith released. Under Indian military law a finding of acquittal by a general or district court martial requires confirmation in the same manner as any other finding by such a court and is not valid until so confirmed.

Procedure on conviction.

53. (A) If the finding on any charge is "Guilty," then, for the guidance for the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, may take evidence of and record the general character, age, service, rank and any recognised acts of gallantry or distinguished conduct of the accused, any previous convictions of the accused either by a court-martial or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 20 of the Act, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit.

(a) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting the accused and identifying the accused as the person referred to in that summary.

(c) The accused may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the accused so requests, the regimental books, or a duly certified copy of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

(n) When all the evidence on the above matters has been given the accused may address the court thereon.

(4) The court will always take evidence as to character, etc., unless the circumstances render it impracticable so to do, in which case they will record the reasons for such impracticability in the proceedings. The procedure is the same in this respect, whether the accused is an officer, warrant officer or person enrolled under the Indian Army Act, and if such evidence is available in the case of a person casually subject to military law under Indian Army Act, section 2 (1) (c), it should also be produced at his trial.

Evidence on the part of the prosecutor upon the matters referred to in this rule should not be given by a member of the court.

Witnesses in favour of an accused person's character will be called, as a rule either as part of his defence, or after his address and before the finding, but under this rule (c) may be called to rebut the evidence given by the prosecutor after the finding.

In cases of alleged desertion the fact of the accused having surrendered or been apprehended should not if there is any reason to believe it to be one of the material facts of the case be left until after the finding. If it is a material fact it should be proved like any other fact as part of prosecution. Under section 51-A (5) and (6) of the Act certain certificates are in some cases admissible as evidence of the fact, date and place of a surrender or apprehension. The circumstances of a surrender or apprehension, however, cannot in any case be proved by documentary evidence and when proof of that is necessary the person to whom or by whom, the surrender, or apprehension, was made or at least a person present at the surrender or apprehension must be called as a witness.

The court will not take evidence of any conviction against the accused by a criminal court whilst he was a civilian. But convictions by a criminal court while the accused is a soldier may be given in evidence, although the offence was committed while he was in a state of absence or desertion.

Evidence of loss or damage will be taken in the course of the trial, as Rule 20 (r) provides that the facts justifying any deduction from pay are to be stated in the particulars. In case such evidence has not been taken there is nothing to prevent the court taking it after the finding, if necessary. In case of damage caused by an offence, the cause and effect must be closely related in order to warrant a sentence of stoppage. Thus a person would not for this purpose be said to have caused damage to a military policeman's clothes because the policeman fell down and damaged them while in pursuit of the accused when endeavouring to escape.

If two or more accused persons are convicted of a joint offence, each of them may be ordered to pay the whole amount of the compensation for any loss or damage occasioned by that offence. They will, ordinarily, contribute equally but each of them is liable to pay the whole compensation in default of the other. In no case can the sum of both contributions exceed the whole compensation awarded, as when that is recovered the loss or damage is "made good" (Indian Army Act, section 43 (h)), and no further stoppage can legally be enforced.

1. **Military reward**—For definition, see section 7 (15) of the Act.

Can sentence him to forfeit.—See Indian Army Act, section 43 (h) (1f). The object of taking this evidence, and evidence of the rank of the accused is for the purpose of enabling the sentence to be awarded correctly. The court cannot sentence an accused person to forfeit an order such as the Order of British India or the Indian Order of Merit or the decorations the Victoria Cross or the Military Cross. The forfeiture of the Indian Distinguished Service Medal could legally be awarded by sentence of court-martial.

(r) **Regimental books**—This term includes departmental books of the same nature as those kept up by Corps, e.g., a sheet roll or a court-martial book. But the term does not include departmental business books. See also note to section 51-A of the Act. A statement containing a summary of the entries against the accused person's name in these books with a statement as to his age, service, rank, etc., is to be produced and verified by a witness as being correctly extracted from these books, a witness must also identify the accused as being the person referred to in such statement. This witness should usually be the adjutant or some other officer. There is nothing to prevent the prosecutor being the witness and the remarks in the note to Rule 46 (c) do not apply. He must, however, be sworn like any other witness, it is not sufficient that he should have been sworn as a witness before the same court on the same day in the course of the trial of some other person. If the accused challenges the correctness of the statement, the regimental books, or a duly certified copy thereof, must be produced, and the court must compare the statement with the books—see (D).

(D) **Duly certified copy**—This means a copy certified by the officer having custody of the book.

Any previous convictions of the accused may be proved by the production of a certifying extract from the regimental books, certified by the officer in charge of those books. A conviction by a criminal court may also be proved by an extract certified under the hand of the person having the custody of the records of the court in which the conviction was had, and must be so proved if there is reason to doubt the correctness of the entry of the conviction in the regimental books. A witness must always be called to prove the identity of the accused with the person stated in the extract or certificate to have been convicted.

Sentence

54. The court shall award one sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

For form see Appendix III, Form of Proceedings, paragraph (11)

The court will award such sentence as they think the accused ought to suffer, and the judge-advocate, president, or superintending officer will enter it at once in the proceedings.

The object of the latter portion of this rule is to prevent legal objections to the sentence. If for example, the accused has been convicted on a charge of making away with the regimental accoutres, which cannot be punished with transportation, and also on a charge of desertion, which is punishable with transportation, the court may pass a sentence of transportation and that sentence will, under this rule, be valid because justified by the second charge, although not justified by the first charge.

With respect to the opinions on the sentence, see Rule 75 and the rules thereon.

The sentence must, of course, be authorised by the Indian Army Act, and the court cannot, for example, sentence a person to restore stolen property, or to confinement to labour. But the court can, in appropriate cases, under section 125 B of the Act, make a separate order for the disposal of property. Such an order should be recorded below the signature of the president to the sentence and should be separately dated and signed by the president. If so made it must, of course, be made before the court is *functus officio*.

Sentences, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days are to be recorded in months and days. A month means a calendar month without any specification of the civil calendar.

Even if the accused is considered, by the medical officer who examines him before trial, unfit to undergo rigorous imprisonment, the court can sentence him to it as it is the business of the medical officer of the prison or place of military custody, to decide what severity of labour he can undergo. Sentences of simple imprisonment are obviously inexpedient and inconvenient of execution.

Recommendation to mercy

55. (a) If the court make a recommendation to mercy, they shall give their reasons for their recommendation.

(b) The number of opinions by which a recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

(c) A recommendation to mercy will be appended to the sentence, and be embodied in the proceedings before they are signed by the president.

For form, see Appendix III, Form of Proceedings, paragraph (11)

Signing and transmission of Proceedings.

56. Upon the court awarding the sentence, the president shall date and sign the sentence and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate or superintending officer, if any, shall be at once transmitted for confirmation.

For form, see Appendix III, Form of Proceedings, paragraph (11), and see Rule 87.

It is essential that the sentence be signed by the president, as by section 106 of the Act, the term of transportation or imprisonment commences on the day on which the sentence and proceedings were signed by him. His

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signature after the sentence will authenticate all the proceedings of the trial.

The judge-advocate or superintending officer (if any) will sign after the president.

As a rule, certified copies of original documents produced in evidence by the prosecutor, and not the originals themselves, will be annexed to the proceedings.

Confirmation and Revision.

57. (A) Where the finding or sentence is sent back for revision under section 100 of the Act the court shall re-assemble in closed court, but if the court is directed to take fresh evidence on revision such evidence must be taken in open court and in the presence of the accused.

(b) Where the finding is sent back for revision and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding, and if such new finding involves a sentence, pass sentence afresh.

(c) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(d) After revision the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate or superintending officer, if any, shall be at once transmitted for confirmation.

(A) Indian military law as to revision differs from that contained in the (British) Army Act. Under the former, a finding of acquittal can be revised and the accused found guilty and sentenced, a sentence can be increased on revision, and evidence can (if so ordered) be taken on revision. None of these things can be done under the (British) Army Act.

The court should re-assemble at the time mentioned in orders, which should be as soon as practicable. If it is reduced by death, inability to attend, or otherwise, below the legal minimum [see Indian Army Act, section 100 (3)] it is dissolved and cannot re-assemble for revision, and the proceedings must be returned, without any entry thereon, to the confirming authority.

(b) Where the finding is sent back for revision and the court adhere to their finding, they can nevertheless revise their sentence.

If the new finding is acquittal or insanity no fresh sentence is involved, but in all other cases where the old finding is revoked, a new sentence must be recorded, even though it be identical with that formerly passed, inasmuch as on the revocation of the old finding the sentence passed thereon ceases to have effect.

the finding is "Guilty" or not proceed as (A) of the present must not be taken on section 100 (1)

(D) For form, see Appendix III, Form of Proceedings, paragraph (12)

All letters or memoranda containing instructions to a court for a revision, or copies thereof, are to be attached to the proceedings.

Confirmation—This should be effected simply by the word "confirmed" The word approved should not be added. Any remarks will be separate from, and form no part of, the proceedings. In no case will the confirming authority comment upon a finding of "not guilty" or the inadequacy of a sentence.

58. The charge, finding, sentence, and confirmation of a Promulgation court-martial shall be promulgated in such manner as the confirming authority may direct, and if no direction is given, according to the custom of the service.

In the absence of any direction by the confirming authority, the usual custom of the service will be followed, but a written notice to the offender of the charge, finding, sentence and confirmation will be sufficient promulgation to satisfy this rule.

A recommendation to mercy should be promulgated and communicated to the accused together with the finding and sentence.

See Indian Army Act, sections 105, 107 and 108 A, as to committal to a civil prison or to military custody of persons sentenced to transportation or imprisonment, as to action in exceptional cases, see section 108. For forms of committal warrant, see Appendix II.

As to the suspension of sentences of transportation or imprisonment, see section 3 of the Indian Army (Suspension of Sentences) Act in Part III.

Mitigation of sentences on a partial confirmation.

59. (1) Where a sentence has been awarded by a court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges the findings on which are confirmed

(2) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of such charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

(3) In the case of a man convicted on a charge of desertion and also on a charge of making away with his regimental necessaries, and sentenced to transportation—if the confirming officer confirms the finding on the first charge, which justified the sentence
 "this rule to commute the sentence
 the sentence would be in excess of
 which is confirmed, and therefore be
 invalid

Again, if the second charge in the above case were using criminal force to an officer and the confirming officer refuses to confirm the finding on that charge while confirming the finding on the first charge, it will be his duty to consider whether the sentence of transportation is not too severe for the offence of desertion, unaccompanied by aggravating circumstances, and if he thinks so, he will commute it to some less punishment

(4) The object of this paragraph is to allow any permanent authority to do after confirmation, what paragraph (1) allows to be done before confirmation, that is to say, to provide that, if the judge-advocate-general in India, the deputy judge-advocate-general or the assistant judge-advocate-general of the command or a court of law declares one of several charges to be invalid, the commuting authority may mitigate or commute the sentence, so as to prevent the whole sentence being invalid, and to make it a valid sentence in respect of any other charge which is valid

Confirmation of finding on alternative charge.

60. (1) Where a special finding has been recorded in relation to alternative charges under Rule 51 (r), and the confirming authority is of opinion that the facts found by the special finding constitute in law the offence charged by any of the alternative charges, that authority may confirm the finding, and in that case shall declare that the finding amounts to a finding of guilty on that charge; but if it is afterwards declared by any authority having power to remit or commute the punishment awarded that the said facts constitute in law the offence charged in one of the other alternative charges, then the confirming authority, or such other authority as aforesaid, may declare that the finding amounts to a finding of guilty on that alternative charge; and the finding shall be a valid finding of guilty on the charge specified in that

behalf in the declaration made on confirmation, or, in case of a subsequent declaration, in that subsequent declaration.

(b) The sentence awarded in the case of any such special finding may likewise be confirmed, subject to this proviso, that if the offence in one of the alternative charges involves a higher punishment, or is otherwise graver, than the offence in the charge of which the accused is found to be guilty under the terms of any declaration mentioned in (a), the authority making the declaration, or some other authority having power to mitigate, remit or commute the punishment awarded, shall mitigate, remit, or commute the punishment according as seems just, having regard to the last-mentioned offence; and the punishment as so modified shall be as valid as if it had been originally awarded in respect of the last-mentioned offence.

(A) See note to Rule 51 (r).

For forma, see Appendix III, Form of Proceedings, paragraph (13). The object of this rule, as already explained, in the note to Rule 51 (r), is

[illegible]

(a) As respects the sentence, see note to preceding rule

61. (A) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed, and if the punishment awarded by the sentence is in excess of the punishment authorized by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorized by law; and the confirming authority may confirm the finding and the sentence, as so varied, of the court-martial.

(4) The object of this rule is to prevent the proceedings of courts-martial being rendered invalid, when they cannot be sent back for revision with great inconvenience to the public service. It will not exonerate from blame the presidents, superintending officers, and members of courts-martial who pass sentences which are informal, or in excess of their powers, and confirming officers will, if practicable, send the sentence back for revision, and if they act under this rule will call the attention of the court to the informality or illegality of the sentence.

Under this rule the confirming authority may vary the form in which a sentence is expressed, but cannot amend a sentence wholly illegal; as, for example, if an officer were sentenced to reduction to the ranks, or if a soldier were sentenced by district court-martial to transportation, or if a non-commissioned officer were sentenced to be reduced to the rank of lance-nail, or a lance-nail to the ranks.

In any such case the confirming officer should treat the sentence as a nullity and direct the court to re-assemble and pass a valid sentence.

Where the punishment exceeds what is authorized by law, the confirming authority can, though such sentence is illegal, vary the sentence so as to bring it into conformity with law and confirm it as varied.

62. A member of a court-martial, or an officer who has acted as prosecutor at a court-martial, shall not confirm the finding or sentence of that court-martial, and where such member or prosecutor becomes confirming officer, he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of court-martial.

Proceedings of General and District Court-Martial.

Seating of
members.

63. The members of a court-martial shall take their seats according to their army rank.

For rules as to the precedence of Indian officers, see Regulations for the Army in India.

Conduct of pro-
ceedings

64. (a) In the case of a court-martial composed of British officers, the president shall conduct the proceedings.

(b) In the case of a court-martial composed of Indian officers, the judge-advocate, if there is one, shall conduct the proceedings. If there is no judge-advocate, the superintending officer shall conduct them.

Responsibility
of officer con-
ducting the
proceedings

65. (a) The officer conducting the proceedings is responsible for the trial being conducted in proper order, and in accordance with the Act, and will take care that everything is conducted in a manner befitting a court of justice.

(b) It is the duty of the officer, conducting the proceedings to see that justice is administered, that the accused has a fair trial and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance or of his incapacity to examine or cross-examine witnesses, or otherwise.

(c) The court should always have before them a copy of the Indian Army Act, of Regulations for the Army in India, and of these Rules and any other official books or orders which are necessary for the purpose of the proceedings.

If any person, other than the accused, interrupts the proceedings of the court, the best course will ordinarily be to order him to be excluded from the court. The court have, however, further powers under Rule 136 for dealing with persons who interrupt their proceedings.

It must be remembered that the trial of a person cannot proceed in his absence even though he interrupts the proceedings.

(d) The officer conducting the proceedings should, like a judge in a criminal court, act as counsel for an accused person not defended by counsel, and he will, therefore, cause to be called before the court any witness, though not called either by the prosecution or the defence, whom he considers able to give material evidence to the court and such witness may be cross-examined by the prosecutor and the accused. He will also put to the witnesses any questions which appear to him necessary or desirable to elicit the truth, and will particularly take care that the accused does not suffer any prejudice in consequence of his inability to put proper questions to the witnesses, or in consequence of his not fully understanding the nature of the proceedings. He will examine the summary of the evidence, and if a witness gives different evidence from what is there stated, will question him as to the difference.

Power of court
over address of
prosecutor and
accused.

66. (a) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.

(b) The court may stop the prosecutor in referring to any matter not relevant to the charge then before the court, or any matter which the court is not investigating, and it is duty of the court to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(c) The court shall allow great latitude to the accused in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives

of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to any liability to further proceedings to which he would otherwise be subject. The court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely on ground of such irrelevance.

(a) On a plea of not guilty the prosecutor should, if the case is complicated, make an opening address giving an outline of the evidence he intends to call but abstaining from any argument and comments not required to explain the nature of the case. The prosecutor is an officer for securing that justice is done, not a partisan to obtain a conviction, independently of the justice of the case. Therefore he should prove, either by witnesses called for the purpose or by the examination of his other witnesses, any facts which show the true character of the offence, whether they tend to aggravate or alleviate it, or to show the innocence of the accused, and he must be especially careful to prove any facts tending to show either the innocence of the accused, or to extenuate his offence. If, for example, the accused is charged with grossly insubordinate conduct to his superior officer, and there are circumstances of provocation which, if proved, might mitigate the punishment though not justifying an acquittal, the prosecutor should call evidence to prove these circumstances.

Again many acts are only offences when done knowingly or with a certain intent. *Prima facie* it lies on the prosecution to show that the accused had the guilty knowledge which constitutes the offence, but absolute proof of guilty knowledge or intent is frequently impossible, and it can only be inferred from the circumstances. This inference the court is at liberty to draw unless the accused produces evidence to rebut it, but in this, as in every other case, all facts which tend to show either the existence or the absence of the intent or knowledge on the part of the accused must be brought out by the prosecutor. For example, if a soldier is charged with attempting to desert, and the evidence is that he went to a railway station and took a ticket for (say) Peshawar, and the fact is that several other soldiers in possession of passes took tickets for Peshawar at the same time, the latter fact should be brought out, as it gives a different complexion to the fact of taking a ticket, which of itself might be strong evidence against the accused.

The prosecutor must not introduce into the evidence against the accused any matters of aggravation which do not form part of the transaction in respect of which the accused is charged before the court, nor, as a rule, matters, which if true, are specific military offences with which the accused might be charged. If, for instance, he is charged with desertion, the prosecutor must not introduce by way of aggravation, that he has been insolent or insubordinate, or that he had been previously intoxicated. On the other hand, if a soldier is charged with serious acts of insubordination, and the soldier was intoxicated, that fact should be brought out in the examination of the witnesses. Not only is the intoxication part of the circumstances of the case, but it may modify the character of the offence.

(b) *Matter not relevant to the charge*—What is, and what is not relevant to any charge, is in some cases a matter of considerable difficulty, but in ordinary cases common sense will determine whether the matter referred to does or does not bear on the particular charge before the court.

Anything which tends to show that the accused committed the offence mentioned in the charge, or to show the true character of the offence, *suo jure* to (a) is, ordinarily speaking, relevant.

(c) The right of the accused in making his defence is stated in this paragraph. The case must be very special indeed to justify the court in stopping an accused person in his defence or in excluding on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against an accused person on account of his defence.

Where a person tried for desertion made in his defence statements reflecting on the officers of the regiment as the reason for the prevalence of crime in the regiment, it was held that the defence, although the statements in it were eventually proved to be false was not wholly irrelevant, as the accused might have hoped that the statements would lead to a mitigation of his punishment and it was also held that the proper course was not to try the offender again for the purpose of ascertaining the truth of his statements, but to hold a court of inquiry for that purpose.

67. Where two or more accused persons are tried together and any evidence is tendered by any one or more of them, the evidence and addresses on the part of all the accused persons shall be taken before the prosecutor replies and the prose-

Proceedings at trial of accused persons together.

cutor shall make one address only in reply as regards all the accused persons.

Separate charge
sheets.

68. (a) When the convening officer directs any charges against an accused person to be inserted in different charge-sheets, the accused shall be arraigned and until after the finding tried, upon each charge-sheet, separately, and accordingly the procedure in Rules 32 to 31, both inclusive, shall, until after the finding be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(b) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(c) When the court have tried the accused upon all the charge-sheets they shall in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 52 and in case of the finding on any one or more of the charges being "Guilty" proceed as directed by Rules 41 and 53 to 56 both inclusive in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(d) If the convening officer directs that in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the accused upon any of the subsequent charge-sheets, proceed as before directed by (c).

(e) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately, and in such case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(f) If the accused pleads "Guilty" to a charge in a charge-sheet, and the trial does not proceed [as mentioned in Rule 44 (a)] with respect to the other charges in that charge-sheet, the court shall, subject to the directions of the convening officer, proceed to try the accused on the charges in the next charge-sheet before they proceed as directed by Rule 41 (b) and (c).

(g) Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not embarrassed by being tried at the same time on several charges, but embarrassment will certainly arise if the facts of any of the charges are very complicated or if the alleged offences were committed at different times or if different sets of witnesses are required to prove the different offences. In such cases, even practised advocates and judges find a great difficulty in keeping the different charges and the evidence on each charge distinct, and still more will the difficulty be felt by an uneducated person, and by a court not constantly accustomed, like a criminal court, to deal with evidence.

In such cases, therefore, as a general rule, the convening officer should cause the charges to be inserted in separate charge-sheets.

The cases which are likely to arise may be classified as follows:—

Case No 1.—(Single offence repeated on different days.) The first case arises where the accused has been guilty of the same description of offence on two or more different days. For example, a soldier steals from a

comrade a watch on Monday, a pair of shoes on Tuesday, a pair of socks on Wednesday, and so forth. Supposing he had stolen all these articles at the same time, it would have constituted the same offence, but if he steals them on separate days, the offences are obviously distinct.

Case No. 2.—(Several offences forming part of one wrongful transaction.) A more difficult case arises where the acts of which a person has been guilty are in fact parts of one wrongful transaction, so to speak and yet involve several military offences of different descriptions.

For instance, a soldier, being intoxicated, uses grossly insubordinate language to his havildar, who is in the execution of his office, knocks him down and then absents himself. He commits four offences: (1) the offence of intoxication, (2) the use of grossly insubordinate language to his superior officer in the execution of his office; (3) the use of criminal force to his superior officer; (4) desertion, (or absence without leave).

Case No. 3.—(Several offences not forming part of the same wrongful transaction.) Another case arises where several offences of different descriptions have been committed by the same person, but at different times. For example, suppose that in the preceding case, the desertion, or absence without leave, had taken place sometime after the commission of the two previous offences, and in such manner that they could not be deemed part of the same wrongful transaction.

In case No. 1, the offences being of the same description, may, as a general rule, be contained in the same charge-sheet; but many offences of the same description should not be inserted in the same charge-sheet, as to do so might embarrass the accused in his defence. Usually it will be undesirable to insert more than three charges for offences of the same description in the same charge-sheet, unless the offences have been part of a system as, for instance, a system of fraudulent misapplication carried on by the accused in which case it may not be improper to increase the number of charges.

In case No. 2, four offences constitute one wrongful transaction, and therefore may be included in the same charge-sheet; but if they are so included, the accused must not at the same time be charged in the same charge-sheet with any previous offence of the same description, as, for instance, any previous offence of using criminal force to a superior officer, or of desertion, etc.

In case No. 3, if the accused is charged both with using criminal force to his superior officer and with desertion, or absence without leave, the latter offence should not be included in the same charge-sheet as the former.

In practice, in such an instance as case No. 2, the serious offences of using criminal force to a superior officer and of desertion, or absence without leave should alone be charged.

Indeed, it is advisable, as far as possible, to avoid charging an accused person with more than one offence, as a multiplicity of charges tends to unnecessary trouble and confusion; and if the gravest of several offences is selected, the punishment will, in all probability, be sufficient to satisfy the ends of justice. It may, however, in some cases be necessary to prove several offences, in order to guide the court as regards the proper amount of punishment.

Assuming that it is doubtful whether one or more of a set of offences can be proved, it will of course be advisable to omit any offence the evidence with respect to which is doubtful, and to bring before the court those charges only of which the proof appears to be sufficient.

The result of the above remarks is as follows—

(i) Repeated instances of the same description of offence may be included in the same charge-sheet, though each instance must constitute a separate charge.

(ii) Offences of different descriptions should be included in separate charge-sheets, except where they form part of the same wrongful transaction.

(iii) If offences of different descriptions are included in one sheet, as forming part of one wrongful transaction, any act which forms part of that wrongful transaction should be charged as an offence in the same charge-sheet.

(iv) Where one offence has in fact been committed but doubt exists as to what particular description of offence has been committed, the charge-sheet may include alternative charges for offences of different descriptions, but each charge will refer to the same set of particulars.

(a) The convening officer will regulate the order for the charge sheets according to the gravity of the offence as to the summoning the witnesses, or other circumstances. It is first the gravest offence as, if the accused is convicted, he is then punished without trying him on the minor offence. It may be better to try an accused person on a charge of desertion to avoid the necessity, if he is convicted upon that charge, of trying him on the other charges.

efficiency where the case is complicated, and the number of witnesses is large.

(c) It will be observed that the separation of charge in different charge-sheets is merely for the purpose of enabling the court and the accused to keep distinct in their minds the different cases and the evidence thereon, with a view to the accused making a proper defence, and the court arriving at a proper finding, without being confused by evidence on entirely distinct cases, and that the result, when the time for sentence is reached, is the same as if the prisoner had been tried at the same time on all the charge-sheets. Unless, therefore, the commanding officer directs under (b), that the accused need not be tried upon the subsequent charge-sheets, the court will not sentence the accused, until they have disposed of all the charge-sheets, and will then award one sentence in respect of all the charges contained in the different charge-sheets of which the accused has been found guilty.

(d) It will often be unnecessary if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the different charge-sheets.

(e) The court should always, unless they think the claim very unreasonable, accede to a demand to be tried separately in respect of any particular charge.

(f) The object of this is only to provide that all the charge-sheets should be disposed of before the court proceed to sentence the offender; in the case of "not guilty" this is proved for by (c).

Sitting in closed Court.

69. (a) When a court-martial sits in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge-advocate, or superintending officer, any officers under instruction and if an interpreter has been appointed and the court consider his presence necessary, the interpreter; and the court may either retire, or may cause the place where they sit to be cleared of all other persons not entitled to be present.

(b) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court and in the presence of the accused.

(c) *It shall be in open court.*—This does not control the power of the court to exclude a person who interferes with the proceedings—a power incident to every court as necessary for the proper conduct of the proceedings though it does not extend to the exclusion of the accused, as the trial cannot proceed in his absence.

View.—All the members must proceed to view any place and the accused must be present there. Usually the court will adjourn for the purpose to the place to be viewed.

Continuity of trial and adjournment of Court.

70. (a) When a court is once assembled and the accused has been arraigned the court shall continue the trial from day to day and sit for a reasonable period on every day unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

(b) A court may adjourn from time to time, and from place to place, and may, when necessary, view any place.

(c) A court-martial, in the absence either of a judge-advocate or superintending officer (if such has been appointed for that court-martial), shall not proceed, and, if necessary, shall adjourn.

(d) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(e) If the time to which specified, the adjournment; the proper military authority adjournment is made is not, an adjournment is made is not, shall be to the same place or to further orders from the pr. in

(c) It is very important that a trial by court-martial once begun should proceed with strict regularity and without interruption to its conclusion. This paragraph, therefore, requires the court to sit continuously from day to day unless it is impracticable to do so, or unless an adjournment is necessary for the ends of justice.

Thus the court may adjourn on account of the illness of the accused, or for the purpose of viewing any place, or of securing the attendance of witnesses or their examination on commission (see Rule 124), or of obtaining evidence from recalcitrant witnesses, or of obtaining the opinion of the deputy judge-advocate-general or assistant judge-advocate-general of the command, or for reference to the convening or confirming officer on any question, or for any purpose, if the court are of opinion that such adjournment is necessary for the ends of justice (see note to Rule 121).

The court, however, should not as a rule permit an adjournment for the purpose of obtaining further evidence on the part of the prosecution, and should only adjourn for the production of evidence for the accused, where they consider that he has not previously had sufficient opportunity for procuring his witnesses or where it would be unjust to the accused not so to adjourn. Great care, therefore, must be taken, both by the prosecutor and by the accused, to have ready at the trial all the witnesses, and documents they desire respectively, to produce. The court should adjourn if an adjournment is requested by the accused person to prepare his defence, by the prosecutor to prepare his reply, or by the judge advocate to prepare his summing up.

In the event of the illness of a member, the court, may, if not reduced below its legal minimum, either proceed without him, or adjourn, as they think proper, but if reduced below the legal minimum, Indian Army Act, section 65, applies. A member absent during any part of the proceedings cannot again take his seat in court.

When a court adjourns before the conclusion of the trial the adjournment is to be entered in the proceedings (see Appendix III, Form of Proceedings, paragraph (5)), and either announced in court in the presence of the prosecutor and accused or communicated to them. A brief adjournment (e.g., one of an hour or two) need not be recorded.

Reasonable period—Sittings of six or seven hours will be found as a rule quite long enough, and they should not be further protracted without some special reason.

Too long sittings unduly strain the attention of the members and may operate unfairly to the prisoner, as at the close of a long sitting he cannot properly make his defence. Under Indian military law, trials by court-martial may be carried on at any time.

(a) *From place to place*—This meets the case of a view, as well as of a court martial held on the line of march, also the case of adjournment to the quarters of a sick witness, for the purpose of taking his evidence.

(b) *Military exigencies*—These can seldom occur, except on active service.

71. In case of the death of the accused, or of such illness of the accused as renders it impossible to continue the trial, the court shall ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority. Proceed death or of accused

This evidence will be taken on oath or solemn affirmation in the same manner as on the trial.

72. (A) In the case of or unavoidable absence of shall take the place of the if the court is still composed of number of officers of which it is required by law to consist

(b) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken, shall take no further part in the trial by that court of that person, but the court will not be affected unless it is reduced below the legal minimum.

(c) An officer shall not be added to a court-martial after the accused has been arraigned.

(a) *Smallest number*—See Indian Army Act, section 65 (1), and notes.

(c) *Arraigned*—See note to Rule 23 (a).

Taking of
opinions of
members of
court.

73. (a) Every member of a court must give his opinion on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(n) The opinions of the members of the court shall be taken in succession, beginning with the junior in rank.

Indian Army Act, section 51, requires all decisions to be by an absolute majority except in the case of a sentence of death which requires a two-thirds majority (section 57 of the Indian Army Act). Otherwise, a punishment might be imposed by a minority. For instance, if the punishment proposed by three members was transportation, by two imprisonment and by two a forfeiture, the transportation might be imposed although four members were opposed to it.

In order to obtain the absolute majority, it will be desirable first to take the opinions of the members of the court as to the nature of the punishment to be awarded, that is to say, transportation, imprisonment, dismissal, forfeiture, or other punishment.

Where opinions differ as to the nature of punishment, the most lenient should be put first, then the next most lenient, and so forth, the most severe being put last. Any member who is in favour of the most lenient punishment, if overruled, will of course give his opinion in favour of the next most lenient, and will not oppose this because he is desirous of having the punishment still more lenient.

For example, if the court consist of seven members, of whom three are in favour of transportation, two of imprisonment, and two of a forfeiture, the forfeiture will be put first to the court, and when negatived, the imprisonment will be put next. The members who were in favour of forfeiture will of course vote for imprisonment as against transportation, and thus four votes will be given in favour of imprisonment, being an absolute majority of the court.

When the nature of the punishment has been determined, the quantum of punishment must be ascertained, that is to say, in the case of imprisonment the number of years, months or days of imprisonment.

As before, the most lenient proposal will be put first, and a member who is in favour of the shortest term of imprisonment will of course support the next shortest term, rather than support a longer term, and will not give his opinion against the next shortest term merely because he desires to have a term shorter still.

For example, if in a court of nine members, two members desire to award three months imprisonment, two others four, another six, and the other four ten months, the three months will be put first, and when negatived, the four months will be put next, which will be supported by the members who wished for three months, but will be opposed by the members who desire a longer term. The six months will next be put, and will be supported by those who desire to award three months and four months, so that the ultimate sentence will be six months imprisonment.

Junior in rank, i.e. rank in which they take their seats (Rule 63)

The opinion of each member is taken separately on each charge [Rule 60 (a)]. If there is a judge-advocate, the opinions are taken by him; if there is not, then by the president or superintending officer.

The oath taken by the members of the court operates, as a general rule, to prevent the opinions of the individual members being disclosed. See note to Rule 35.

Procedure on
incited and
questions.

74. If any question should arise incidentally during the trial, the person, whether prosecutor or accused, requesting the opinion of the court, is to speak first: the other person is then to answer, and the first person is to be allowed to reply.

This rule will apply to such questions as the admissibility of evidence, the propriety of any question, or the recalling of a witness.

Sweating of
court to try
several accused
persons.

75. (A) A court may be sworn or affirmed at the time to try any number of accused persons then present before it, whether those persons are to be tried together or separately, and each accused person shall have power to object to the

members of the court, and shall be asked separately whether he objects to any member.

(b) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that person and swear or affirm the members of the court for the trial of the others alone.

(c) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case, postponing the other cases, and taking them afterwards in succession.

(a) Under this rule it will not be necessary, where there are several

This course of procedure will not affect the position of the court, which will, as heretofore, be a separate court for the trial of each case, and, as heretofore the swearing or affirming of the court will be mentioned in the proceedings of each separate case.

(a) It need hardly be observed that when, in consequence of an objection by one accused a new officer serves, the other accused persons who before made no objection to the court will have the right to object to the new officer.

(c) It is obvious that in the case of several accused persons being tried together, each person will be called on separately to plead and make his defence and a finding must be arrived at separately for each person accused, and each person found guilty must be separately sentenced, and a separate record accordingly will be made in the proceedings. It may be proper to make a distinction between the sentences of persons found guilty of the same offence, having regard to rank, character, degree of criminality, or other considerations.

76. (a) At any time during the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the accused request it on any reasonable ground, be sworn or affirmed to act as interpreter. Swearing of interpreter and shorthand writer.

(b) An impartial person may at any time of the trial, if the court think it desirable, be sworn or affirmed to act as a shorthand writer.

(c) Before a person is sworn or affirmed as interpreter or shorthand writer, the accused shall be informed of the person who is proposed to be sworn, or affirmed and may object to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear or affirm that person as interpreter or shorthand writer.

(a) and (a) It will often be convenient to swear or affirm a shorthand writer and interpreter at the same time as the members and officers of the court are sworn, but this is not obligatory. For forms of oath and affirmation see Rule 36.

An interpreter may either be appointed by the convening officer [Rule 27 (C)] or be called in by the court under the present rule. In either case he must be sworn, or affirmed in the form prescribed in Rule 36.

(c) Any objection made by the accused to the interpreter or shorthand writer will be dealt with in the same way as an objection to a member of the court.

The court should, if the accused requests it, allow him to call witnesses in support of the objection. Any objection which appears to the court to have any foundation should, as a rule, be allowed.

77. When any evidence is given in a language which any of the officers composing the court, the judge-advocate, the Evidence, who to be

superintending officer, the prosecutor or the accused does not understand, that evidence shall be interpreted to such officer or person in a language which he does understand. If an interpreter in such language has been appointed by the convening officer, and duly sworn or affirmed, the evidence shall be interpreted by him. If no such interpreter has been appointed and sworn or affirmed, an impartial person shall be sworn or affirmed by the court as required by Rule 76. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

The chargesheet and the documentary evidence as to character will be in English and an interpreter in the language of the accused persons should therefore be appointed in every case in which the accused does not know enough English to understand these documents. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so. See note to Rule 78 as to evidence given in a language which the officer recording the proceedings does not understand.

Record in proceedings of transactions of court-martial

78. (a) At a court-martial the judge-advocate, or, if there is none, the president or superintending officer, shall record or cause to be recorded in the English language, all transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings), and if the judge-advocate is called as a witness by the accused, the president (if the court is composed of British officers) shall be responsible for the accuracy of the record in the proceedings or the evidence of the judge-advocate.

(b) If the court is composed of Indian officers and the judge-advocate or superintending officer is called as a witness by the accused, the interpreter shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate or superintending officer. If no interpreter has previously been appointed, or if the interpreter is unable to record the proceedings in the English language, an interpreter shall be appointed for this purpose by the Court.

(c) The evidence shall be taken down in a narrative form in as nearly as possible the words used, but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*.

(d) Any question which has been objected to, and the tender of any evidence which has been objected to, shall, if the prosecutor or accused so requests, or the court think fit, be entered with the grounds of the objection, and the decision of the court thereon.

(e) Where any address by, or on behalf of, the prosecutor or person under accusation, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court think proper, except that—

- (1) the court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by, or on behalf of, the accused to each charge against him; and
- (2) the court shall also record any particular matters in the address by, or on behalf of, the prosecutor or

as well persons, which the prosecutor or accused person, or the court may be, requires.

(n) The court shall not enter in the proceedings any comment or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president.

(o) The record must be taken in a clear and legible hand without erasures. Interlineations or corrections must be avoided as much as possible, when made they should be verified by the initials of the officer responsible for the accuracy of the record. The pages should be numbered and the sheets fastened together, and sufficient space must be left below the signature of the president for the remarks of the confirming authority. The station must be added, together with the date.

No corrections or additions may be made to the proceedings of a court-martial after promulgation. When an obvious oversight has been made in the record, such as the omission of the words—"The president and members are duly sworn" or the date of the sentence, a certificate, signed by the president to the effect that they were sworn or that the sentence was dated on a particular day, should be attached. This has been ruled not to be an addition to the proceedings.

(p) In a narrative form.—That is to say, the material effect of a question and answer is to be written down as the evidence given by the witness, without distinguishing the question and answer. Thus suppose the question to be "What did the accused do then?" and the answer to be "He left the room" the evidence taken down would be "Accused then left the room." Often especially in cross-examination, the question is irrelevant, or is made irrelevant by the answer, in such cases it will be unnecessary to take anything down.

The officer responsible for the record is, in every case, one of those mentioned in Rule 77 and any evidence which he does not understand will therefore be translated into English by an interpreter duly sworn or affirmed as such.

Where a question or answer is required to be taken down in the proceedings verbatim, and is not in English, it must be taken down, as nearly as may be in the English character and the interpretation of it into English added.

(r) The court can state in a separate document any remarks they think proper to make on the conduct of any person who appeared before them, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also if they think the evidence shows that the accused has committed some offence not charged, e.g., if he is charged with desertion in August, and the evidence shows that he deserted in June, they must acquit him, but may report separately the offence of June.

The court can scarcely be too guarded in expressing censure on individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report, although it will not be correct to enter such matter in the proceedings.

79. The proceeding shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the president or superintending officer, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable times before the court is closed to consider the finding. Custody and inspection of proceedings.

80. The proceedings shall be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court or, in default of any such direction, to the confirming officer. Transmission of proceedings after finding.

Person having the custody, that is (see Rule 79), if it is a general court-martial, or a district court-martial with a judge-advocate, the judge-advocate, and, in any other case, the president or superintending officer of the court.

If from any cause a officer, he cannot con- transmit the proceedi- peient to confirm the martial (see Rule 62).

The proceedings should be dated and signed immediately after the finding in the case of an acquittal on the charges (see Rule 52); and after the sentence in case of a conviction (see Rule 56).

The proceedings of court-martial, when despatched by post, should invariably be sent under registered cover.

Friend of Accused and Counsel

A censured may have a person to assist him on trial.

81. (a) At any general or district court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person.

(b) A person so assisting him may advise him on all points, and suggest the questions to be put to witnesses; and, if an officer subject to military law, shall have the same rights and duties as counsel have under these rules, and the right of the accused shall be limited in like manner.

No person other than an officer subject to military law can, unless a counsel [as defined in Rule 87 (a)], under any circumstances either examine witnesses orally or address the court, though he may be present in court and aid the accused by his advice.

The court should not allow the accused to address them in addition to his counsel, or officer acting as counsel, except as prescribed by Rule 83 (1).

The accused will, of course, be allowed every facility for communicating with his friend, whether a military man or counsel or not.

Counsel allowed in certain general and district courts-martial.

82. (A) Subject to these rules, counsel shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial if the Commander-in-Chief in India or the convening officer declares that it is expedient to allow the appearance of counsel thereat, and such declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(b) Save as provided in Rule 81, the rules with respect to counsel shall apply only to the courts-martial at which counsel are under this rule, allowed to appear.

No one can appear as counsel unless he is qualified as provided in Rule 87 (a). There is no restriction on the number of counsel.

Counsel or an officer acting as counsel, though not bound to such strict impartiality as the prosecutor, must still recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour. In his address, however, he will have the same liberty as the accused, see Rule 66 (c), but he must be even more guarded in referring to the conduct of persons not before the court.

Requirements for appearance of counsel.

83. (1) Where an accused person gives notice of his intention to have counsel to assist him during the trial, either on the day on which he is informed of the charge or at any time not being less than seven days before the trial, or such shorter time before the trial as in the opinion of the court would have enabled the prosecutor to obtain, if he had thought fit, counsel to assist him during the trial, and would have enabled the authority appointing a judge-advocate to appoint counsel to act as judge-advocate at the trial, or where such notice as mentioned in (b) is given to the accused on the part of the prosecution, counsel may appear at the court-martial to assist the accused.

(b) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (a) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(c) The counsel, who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rule 83 or except so far as the court permit him so to do.

(d) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 46 (c) and (d) shall not apply.

84. The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 66 (a). Counsel for prosecution.

The counsel for the prosecution should always make an opening address, and should state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it, without entering into unnecessary detail.

85. The counsel appearing on behalf of the accused has the like rights, and is under the like obligations as are specified in Rule 66 (c) in the case of the accused. Counsel for accused.

86. Counsel, whether for the prosecution or for the accused, shall conform strictly to these rules and to the rules of criminal courts in India relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel. General rules as to counsel.

Counsel should treat the court and judge-advocate (or superintending officer) with due respect, and should, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

Rule of criminal courts in India.—See Part I, Chapter V, paragraphs 101 to 113, especially paragraph 110, as to injurious questions. Counsel ought not to state as a fact any matter which is in dispute, or which he does not intend to prove, neither should he assume that facts have been given, or that particular

87. (A) Neither the prosecutor nor the accused has any right to object to any counsel if properly qualified. Qualifications of counsel.

(a) Counsel shall be deemed properly qualified if he is a legal practitioner authorized to practise with right of audience in a Court of Sessions in British India, or if, in any part of His Majesty's dominions other than British India, he is recog-

nised by the convening officer as having in that part rights and duties similar to those of such a legal practitioner in British India and as being subject to punishment or disability for a breach of professional rules.

Statement by
accused defend-
ed by counsel
or officer.

88. (A) An accused person assisted by counsel, or by an officer subject to military law, may, if he thinks fit, at the close of the case for the prosecution and before the address by such counsel, or officer, make a statement giving his own account of the subject of the charges against him.

The statement may be made either orally or in writing, but the accused making the statement shall not be sworn, and no question can be put to him by the court or by any other person.

(B) If the accused make such a statement the procedure shall, so far as possible, be the same as if the accused had called witnesses to the facts of the case.

(A) Therefore the prosecutor will be entitled to call witnesses in reply, and to reply to the address of counsel or the officer acting as counsel for the accused.

Judge-Advocate

Disqualification
of judge-
advocate.

89. An officer who is disqualified for sitting on a court-martial, and any other person who would have been so disqualified had he been an officer, shall be disqualified for acting as judge-advocate at that court-martial.

Disqualified.—See Rule 29 (8) and note thereon.

Substitute on
death, illness or
absence of
judge-advocate

90. If the judge-advocate dies, or from illness or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance to the convening authority; and a person not disqualified to be judge-advocate may be appointed by that authority, who shall be sworn, or affirmed, and act as judge-advocate for the residue of the trial, or until the judge-advocate returns.

Sworn or affirmed.—See Rule 36. See Appendix III, Form of Proceedings paragraph (5).

Powers and
duties of judge-
advocate.

91. The powers and duties of a judge-advocate are as follows.—

(A) The prosecutor and the accused, respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(B) At a court-martial he represents the judge-advocate-general.

(C) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.

(D) Any information or advice given to the court on any matter before the court shall, if he or the court desire it be entered in the proceedings.

(E) At the conclusion of the case he shall, unless both he and the court consider it unnecessary, sum up the evidence.

and give his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding.

(f) The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion.

(g) The judge-advocate has, equally with the officer conducting the proceedings, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.

(h) In fulfilling his duties the judge-advocate must be careful to maintain an entirely impartial position.

(i) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by the opinion of the judge-advocate, and not overrule it, except for very weighty reasons. The courts are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. The members of the court may become responsible to the ordinary civil courts of law in the event of the accused being unjustly convicted. This liability may turn on the question whether they exercised a *bond fide* judgment, and though they are not bound by the opinion of the judge-advocate, yet disregard of his advice, if that advice is right, might be held to show that they did not exercise a *bond fide* judgment. On the other hand, the adoption of the advice of the judge-advocate, even if wrong, may, in a doubtful case, practically exonerate the members from liability.

(j) *Permission of the court*—This should never be refused unless the court consider that the judge-advocate is acting improperly, or in such a manner as to obstruct the proceedings, and they should always record their reasons for refusing the permission.

As to the duty of the officer conducting the proceedings towards the accused, see Rule 65 (a) and note.

SECTION 3—SUMMARY COURTS-MARTIAL

92. The officer holding the trial, hereinafter called the court, shall record, or cause to be recorded, in the English language, the transactions of every summary court-martial. Proceedings.

93. When any evidence is given in a language which the court or the accused does not understand, that evidence shall be interpreted to the court or accused as the case may be in a language which it or he does understand. The court shall, for this purpose, either appoint an interpreter, or shall itself take the oath or affirmation prescribed for an interpreter at a summary court-martial. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary. Evidence when to be translated.

Any evidence not understood by the officers attending the trial should also be translated to them.

The commanding officer should, as a general rule, take the interpreter's oath or affirmation himself. In the rare cases where the commanding officer does not know the language of the accused he should appoint a competent interpreter. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so.

94. When the court, the interpreter (if any), and the Assembly, officers attending the trial are assembled, the accused shall be brought before the court, and the oaths or affirmations prescribed in Rule 95 taken by the persons therein mentioned.

This accused cannot object to the court or interpreter.

Swearing or affirming of court and interpreter.

95. (A) The court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience.

Form of oath.

"I do swear that I will duly administer justice, according to the Indian Army Act, without partiality, favour or affection, and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases. So help me God".

The words "So help me God" may, when necessary, be omitted or varied.

Form of affirmation

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice,"—etc.,—as in the form of oath but omitting the words "So help me God".

(b) After which the court, or some person empowered by it, shall administer to the interpreter (if any) an oath or affirmation in one of the following forms, or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

Form of oath.

"You do swear that you will faithfully interpret and translate, as you shall be required to do touching the matter before this court-martial. So help you God."

The first person may, when necessary, be substituted for the second in this form of oath, and the words "So help you God" omitted or varied.

Form of affirmation.

"I solemnly affirm, in the presence of Almighty God, that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial"

(c) After the oaths and affirmations have been administered all witnesses will withdraw from the court.

See notes to Rules 35 and 37 which apply *mutatis mutandis* to the oaths and affirmations referred to in this note

The "Court" is, of course, the officer holding the trial. The officers attending the trial do not form part of the court and are not, as such, sworn or affirmed,—Indian Army Act, section 64 (2)

Swearing of court to try several accused persons.

96. (A) A summary court-martial may be sworn or affirmed at the time to try any number of accused persons then present before it whether those persons are to be tried together or separately.

(b) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case postponing the other cases and taking them afterwards in succession.

Arraignment of accused.

97. (A) After the court and interpreter (if any) are sworn or affirmed as above-mentioned, the accused shall be arraigned on the charges against him.

(b) The charges on which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

(c) When two or more accused are tried together for the same offence each is separately arraigned.

(d) The charge sheet, after being read to the accused, is attached to the proceedings.

When the sanction of superior authority is necessary for the trial of a charge by summary court-martial, such sanction should be entered at the foot of the charge sheet and signed by the superior authority or a staff officer.

98. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules. Objection by accused to charge.

See Rules 18 to 21. An objection to the jurisdiction of the court must be raised by way of special plea.—Rule 100

If it appears that the accused is by reason of insanity unfit to take his trial, the court will find the fact specially and he will be dealt with as provided in Rule 131

99. (a) At any time during the trial if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, it may amend the charge-sheet so as to correct that mistake. Amendment of charge.

(b) If on the trial of any charge it appears to the court at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, it may amend such charge and may, after due notice to the accused, and with the sanction of the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the accused if the amended charge requires such sanction, proceed with the trial on such amended charge.

See notes to Rule 40

It will be observed that if the amended charge is one requiring the sanction of superior authority (see Indian Army Act, section 74) reference must be made to such authority before the trial is proceeded with. If, however, the commanding officer considers that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline, reference becomes unnecessary. The commanding officer should, in such a case, attach the usual memorandum (Rule 116) and, after giving the accused sufficient notice of the amendments, proceed with the trial.

100. If a special plea to the general jurisdiction of the court, or a plea in bar of trial, is offered by the accused, the procedure laid down for general and district courts-martial when disposing of such pleas shall, so far as may be applicable, be followed, but no finding by a summary court-martial on either of such pleas shall require confirmation. Special pleas.

See Rules 41 and 43 and notes thereto

101. (a) The accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge. General plea of "Guilty" or "Not guilty."

(b) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court, but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in

particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

See notes to Rule 42, which apply *mutatis mutandis* to this Rule

Procedure after
plea of
"Guilty."

102. (A) Upon the record of the plea of "Guilty," if there are other charges in the same charge-sheet to which the plea is "Not guilty," the trial shall first proceed with respect to those other charges, and, after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may instead of trying him, record a finding of "Not guilty" on each alternative charge to which the accused has not pleaded "Guilty."

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall read the summary of evidence, and annex it to the proceedings, or if there is no such summary, shall take and record sufficient evidence to enable it to determine the sentence and the reviewing officer to know all the circumstances connected with the offence. This evidence shall be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty".

(C) After such evidence has been taken, or the summary or evidence has been read, as the case may be, the accused may address the court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(D) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty," and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(F) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

See notes to Rule 44

Withdrawal of
plea of "Not
guilty."

103. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty" and plead "Guilty", and in such case the court shall at once, subject to a compliance with Rule 101 (n), record a plea and finding of "Guilty", and shall, so far as is necessary, proceed in manner directed by Rule 102

104. After the plea of "Not guilty" to any charge is recorded the evidence for the prosecution will be taken. At the close of the evidence for the prosecution the accused shall be asked if he has anything to say in his defence, and may address the court in his defence, or may defer such address until he has called his witnesses. Procedure on plea of "Not guilty."

The accused may then call his witnesses, including also witnesses to character.

See Rules 125 to 127 regarding witnesses and evidence

The evidence, both for the prosecution and the defence, will, as a rule, be recorded in narrative form, but questions and answers may, as provided in rule 78 (c), be taken down verbatim.

The utmost liberty consistent with the interest of parties not before the court and of the dignity of the court itself, should be allowed to the accused in making his defence, and the court should, if necessary, adjourn to allow him time for his preparation. The accused cannot give evidence himself—see note to Rule 43.

105. The court may, if it thinks it necessary in the interests of justice call witnesses in reply to the defence. Witnesses in reply to defence.

This is an extreme measure and should only be resorted to when the accused has made or elicited from his witnesses some statement material to his defence, which could not reasonably have been foreseen when the case for the prosecution was being investigated.

106. After all the evidence, both for prosecution and defence, has been heard, the court shall give its opinion as to whether the accused is guilty or not guilty of the charges. Verdict.

The court need not be closed and the finding may be pronounced at once. On the other hand, however, the officer holding the trial may clear the court to consider the evidence, or to discuss any point with the officers attending the trial, or may adjourn the court to allow himself time for mature consideration or reference as to any doubtful point.

107. (a) The finding on every charge shall be recorded, Finding and except as mentioned in these rules shall be recorded simply as a finding of "Guilty", or of "Not guilty", or of "Not guilty and honourably acquit him of the same".

(b) When the court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty" record a special finding.

(c) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein.

(d) When the court is of opinion that the facts proved do not disclose an offence under the Act, the court will acquit the prisoner on that charge.

See notes to Rule 81.

108. If the finding on each of the charges in a charge-sheet is "Not guilty", the court shall date and sign the proceedings, the findings will be announced in open court, and the accused will be released in respect of those charges. Procedure on acquittal.

109. (a) If the finding on any charge is "Guilty," the court may record of its own knowledge, or take evidence of and record, the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of Procedure on finding of "Guilty."

the accused, any previous convictions of the accused either by a court-martial, or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 20 of the Act, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit.

(n) If the court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner directed in Rule 53 for similar evidence at general and district courts-martial.

See notes to Rule 53

Sentence.

110. The court shall award one sentence in respect of all the offences of which the accused is found guilty.

See Indian Army Act, Chapter VI

The sentence must, of course, be one authorised by the Indian Army Act, and the court cannot, for example, sentence a person to restore stolen property, or to confinement to lines. But the court can, in appropriate cases, make a separate order under section 126-B of the Act for the disposal of property. Such an order should be recorded as an order separate from the sentence and be separately dated and signed by the Court.

Sentences exceeding one month and of less than one year should be recorded in months, or in months and days. A month means a calendar month.

When a summary court-martial awards a sentence of rigorous imprisonment for a period not exceeding three months to which no sentence of dismissal is added, the court should enter in its sentence a direction that the imprisonment is to be undergone in military custody (I. A. A. section 107). Unless such a direction is given (either in the sentence, which is the proper method, or in a subsidiary order made by the court) the offender has to be committed to a civil prison which is most undesirable in the case of a person who is to return to duty after undergoing his punishment. On active service, however, the officer commanding the forces in the field can (section 107 of the Act) appoint places in which sentences of rigorous imprisonment of any length may be carried out.

As to suspension of sentences of imprisonment see section 3 of the Indian Army (Suspension of Sentences), Act in Part III.

As to sentences of imprisonment in military custody when combined with dismissal, see Rule 154.

Sentences of simple imprisonment are generally inexpedient. See note to Rule 54.

111. The court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings.

See notes to Rule 56.

Charges in different charge-sheets.

112. When the charges at a trial by summary court-martial are contained in different charge-sheets, the procedure laid down for general and district courts-martial when trying charges contained in different charge-sheets, shall, so far as may be applicable, be followed.

Procedure laid down—See Rule 68. Each charge-sheet will therefore be tried from arraignment to finding separately. When all the charge-sheets are disposed of, one sentence will—unless the accused is found not guilty on all the charges—be passed. For circumstances under which charges should be in different charge-sheets, see notes to Rule 68.

Clearing the court.

113. (A) The officer holding the trial may clear the court to consider the evidence or to consult with the officers attending the trial.

(n) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court and in the presence of the accused.

See notes to Rule 69

114. A summary court-martial may adjourn from time to time, and from place to place, and may, when necessary, view any place.

115. In any summary court-martial an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court. Friend et al. v. United States.

116. An explanatory memorandum is to be attached to the proceedings when a summary court-martial tries, without reference, an offence which should not ordinarily be so tried. Memorandum to be attached to proceedings.

See Indian Army Act, section 74. The commanding officer is the sole judge as to whether reference can, without detriment to discipline, be made to superior authority before trying these offences.

117. The sentence of a summary court-martial shall (except as provided in Rule 115) be promulgated, in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall be carried out without delay after promulgation. Promulgation.

The promulgation is generally on a parade of the regiment.

118. When the officer holding the trial has less than five years service the sentence of a summary court-martial shall not (except on active service) be promulgated or carried out until approved by superior authority as provided in section 101 of the Act. Promulgation to be deferred in certain circumstances.

The officer to whom the sentence is referred cannot in any way alter the finding or remit, mitigate, or commute the sentence, but if he considers the sentence too severe he should inform the officer holding the trial of his views and direct him to modify the sentence, which order should be obeyed as a matter of discipline. The original sentence must not be carried out until the case is finally settled.

119. The proceedings of a summary court-martial shall, immediately on promulgation, be forwarded (through the deputy judge-advocate-general of the army in which the trial is held) to the officer authorised to deal with them in pursuance of section 102 of the Act. After review by him they will be returned to the accused person's corps for preservation in accordance with Rule 132. Review of proceedings.

Irregularities in procedure and minor irregularities in evidence should not be reviewed so severely in a summary court-martial as in another court. So long as the charge and sentence are legal, the evidence the accused is convicted on is given on oath or affirmation and is reasonably sufficient, is not hearsay and has not been largely elicited by leading questions, so long as the accused has not been in any way prejudiced in his defence, has been allowed to call all the witnesses he wishes and to cross-examine the witnesses against him, minor irregularities need not vitiate the proceedings or call for more than a remark for future guidance.

Deputy Judge-Advocate-General of the Army, etc.—Now Deputy Judge-Advocate-General or Assistant Judge-Advocate-General of the command, etc.

SECTION 4.—GENERAL PROVISIONS

Witnesses and evidence

120. The prosecutor or, in the case of trials by summary court-martial, the court is not bound to call all the witnesses whose evidence is in the summary of evidence or whom the accused has been informed they intend to call, but they Calling of all prosecutor's witnesses.

should ordinarily call such of them as the accused desires, in order that he may cross-examine them, and shall, for this reason, so far as practicable, secure the attendance of all such witnesses.

As the cross-examination of a witness for the prosecution may be most material for the purposes of the defence, a prosecutor, or officer holding a trial by summary court-martial should always have all the witnesses present. Failure to produce a material witness for cross-examination might invalidate the proceedings. Any witness whose evidence is in the summary of evidence or regarding whom notice has been given and whom the accused asks to have called should be called by the prosecution.

The object of this rule is to enable the prosecution to proceed, although some witness is not available and the rule is not intended to absolve the prosecutor or officer holding the trial from the responsibility for calling all the available witnesses who can give material evidence (see note to Rule 66) and, as a rule the whole case, as it appears in the summary of evidence, should be proved to him. If the case fails from the prosecutor not calling any available witness, or not asking any necessary questions of a witness, he becomes personally responsible to the convening officer.

Calling of witness whose evidence is not contained in summary.

121. If the prosecutor or (in the case of a summary court-martial) the court intends to call a witness whose evidence is not contained in any summary given to the accused, notice of the intention shall be given to the accused a reasonable time before the witness is called; and if such witness is called without such notice having been given, the court shall, if the accused so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed, and the court shall inform the accused of his right to demand such adjournment or postponement.

Where no summary has been delivered, this rule will apply to every witness in such cases notice of the intention to call the witnesses should be given to the prisoner when he is warned for trial (Rule 23). This will prevent delay at the trial.

The court are justified in calling of their own motion a witness not produced by the parties, if they consider it necessary for the ends of justice, but this power should be sparingly exercised and they should not ordinarily adjourn in order to obtain for themselves further testimony.

List of witnesses of accused.

122. The accused shall not be required to give to the prosecutor or court a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary, and for whose attendance the accused has not requested steps to be taken as provided by Rule 23 (4).

The prosecutor may be called as a witness for the defence. The judge-advocate, though not competent as witness for the prosecution, may be called for the defence. A member of a court-martial is a competent witness for the defence, but not for the prosecution, and may be sworn at any stage of the proceedings; but it is desirable to avoid placing officers on court-martial whose evidence is likely to be required. It need scarcely be observed that a member, if called on to give evidence, must be sworn like other witnesses in open court, and be subject to cross-examination, and that he does not cease in any respect to be a member of the court.

Procuring attendance of witnesses.

123. (A) In the case of trials by general or district court-martial the convening officer, or, after the assembly of the court, the president, shall take proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of his attendance.

(B) The court shall, in the case of trials by summary court-martial, take proper steps to procure the attendance of the witnesses whom the accused desires to call and whose attendance can reasonably be procured, but the accused may

be required to undertake to defray the cost (if any) of their attendance.

Proper steps.—See Indian Army Act, section 84, as to summoning witnesses etc., military witnesses actually serving with a corps may of course be ordered by the proper authority to attend, as a matter of military discipline, without the issue of a formal summons.

Whose attendance can reasonably be procured.—These words will prevent a prisoner having any technical ground of complaint in case a distant witness whom he requires is not procured, but it is the duty of the officer (whether the convening officer, the president or the officer holding the trial) to secure the attendance of every witness whom there is any ground to suppose to be material for the defence and the court should adjourn, if necessary, for the purpose.—(See Rule 124.)

May be required to undertake to defray the cost.—This power is given in order to prevent accused persons or prosecutors demanding unreasonably the attendance of witnesses. In the case of the prosecutor, the cost would usually be defrayed as part of the expenses of the prosecution. In the case of the accused the provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness may be held afterwards to invalidate the proceedings of the court-martial, even though if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had on the court.

If a witness has in his possession or under his control any books, accounts, letters, returns papers, or other documents which are thought necessary for the trial care must be taken, in summoning him, to require him to bring them with him as he would be justified in declining to acknowledge a mere verbal request see Indian Army Act, section 84 (4).

For action when a civil witness who has been duly summoned and whose expenses have been tendered does not attend see Rule 136 (c) and notes hereto.

For form of summons, see Appendix III.

As to privileges of witnesses see Indian Army Act section 118.

124. If such proper steps as mentioned in the preceding rule have not been taken as to any witness or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall—

Procedure when essential witness is absent.

- (a) take steps to procure the issue of a commission for the examination of such witness, or
- (b) if it is a general or district court-martial, adjourn and report the circumstances to the convening officer, or
- (c) if it is a summary court-martial, adjourn to enable the witness to attend or adopt such other course as appears to the officer holding the trial best calculated to do justice.

(a) Issue of a commission.—See Indian Army Act, section 85 and notes. Only the judge-advocate-general in India or the deputy judge-advocate-general of a command can issue a commission and then only when action is initiated by a court-martial. An assistant judge-advocate-general as the law now stands cannot issue a commission. Cases from commands in which there is not a deputy judge-advocate-general must be referred to the judge-advocate-general in India.

Such other course.—For instance he can acquit the prisoner forthwith, or order his release for the present but without prejudice to his subsequent trial should the witness become available.

125. During the trial a witness other than the prosecutor shall not, except by special leave of the court, be permitted to be present in court while not under examination and if, while he is under examination a discussion arises as to the allowance of a question, or the sufficiency of his answers or otherwise as to his evidence he may be directed to withdraw.

Withdrawal of witnesses from court.

As the trial begins with the arraignment of the prisoner any witnesses in court should be ordered to withdraw before he is arraigned. If any such discussion as is mentioned in the rule arises, the court should generally order the witness to withdraw, as the discussion might influence his answer.

Oath or affirmation to be administered to witnesses.

126. An oath or affirmation shall be administered to every witness, before he gives his evidence by a member of the court, the judge-advocate, the superintending officer or some other person empowered by the Court in one of the following forms or in such other form to the same purport as the Court ascertains to be according to the religion or otherwise binding on the conscience of the witnesses.

Form of oath.

"You do swear that what you shall state shall be the truth, the whole truth, and nothing but the truth. So help you God."

The first person may, when necessary, be substituted for the second in this form of oath, and the words "So help you God" omitted or varied.

Form of affirmation

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

As to manner in which oaths and affirmations are administered, see notes to Rules 35 and 37.

The Hindustani translation of the above affirmation (for Muhammadans and Jains) is as follows—

Mala Imān (dharma) se Hakk Ta'ālī Khudā ko hāzīr aur nāzīr jān ke (Parmeshwar Bhagwan ko jān main ke) Hārār (bechan) karīā hūn kī main jo bāt kahūngā, so sachchī kahūngā aur bin chhipāve kī bāt ke sab sach kahūngā aur alwā sach ke kuchh aur na kahūngā

Its Persian form is as follows—

Zah Pāk Khudāi Ta'ālī ta hāzīr au nāzīr pohegam au la Imān sara Hārār kawām chī tsa tsa wāyam ba rikhtīā wāyam, au tsa pata khabarā kī wī toī ba rikhtīā wāyam, au pa ghār da rikhtīā ba na not tsa na wāyam.

Sikhs are sworn on the Granth. The following is the form—

"Main Sri Gur Granth Sahib kī suzand khātā hūn kī bāt jo main kahūngā, so sachchī kahūngā, aur main barhāne yā ghatāne ke, sab kuchh sach sach kahūngā, aur alwā sach ke, kuchh aur na kahūngā, aur jo main jōth kahū, to Sri Guru Granth Sahib mush par āfāc dāleā."

If a witness refuses to be sworn or affirmed, or to produce any document in his possession or control, legally required by the court to be produced, or to answer any question to which the court may legally require an answer, the court may, if he is subject to military law, report his conduct to the proper military authority and if he is subject to the Indian Army Act may also order him to be taken into military custody with a view to his punishment. As to action when he is a civilian, see Rule 126

Mode of questioning witness.

127. (a) Every question may be put to a witness orally by the officer holding the trial, the prosecutor, accused, or judge-advocate, and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or accused, in which case he shall not reply until the objection is disposed of. The witness shall address his reply to the court.

(b) The evidence of a witness as taken down shall be read to him after he has given all his evidence and before he leaves the court, and shall, if necessary, be corrected.

(c) If the witness denies the correctness of any part of the evidence when the same is read over to him, the court may instead of correcting the evidence, record the objection made to it by the witness.

(d) If the evidence is not given in English and the witness does not understand that language the evidence as recorded shall be interpreted to him in the language in which it was given, or in a language which he understands.

(a) As under this rule every question may be put to a witness without being previously written down and submitted for the approval of the officer conducting the proceedings or the court, that officer, the court and the judge-advocate, as well as the prosecutor, will have to attend to questions put, so as to object, if necessary, to the question before the witness replies to it.

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that party to be postponed, unless the request appears to be made only for the purpose of obstruction.

Address his reply to the court—That is, he must not address the prosecutor or accused in the second person, as such mode of address may lead to an altercation.

(b) *Lead to him*—When the evidence of a witness has been read to him he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end and not by way of interpolation or erasure.

128. (A) At any time before the time for the second address of the accused (or at a summary court-martial at any time before the finding of the court), the officer holding the trial, the judge-advocate and any member of the court may, subject to the provisions of this rule, address any question to a witness. Questions to witnesses by court or judge-advocate.

(B) At a general or district court-martial such questions shall only be addressed to witnesses with the permission of the court and through the officer conducting the proceedings.

(C) Upon any such question being answered, the officer holding the trial or conducting the proceedings shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the accused, and which the court deems reasonable.

(A) Any such question will ordinarily be more conveniently put after the examination of the witness by the prosecutor and the accused is concluded, but before any other witness is called.

Any question means, in this rule and the next, any question which might have been put to the witness when first called.

The court should always, under the power given by this rule, ask a witness any question which they are requested by the prosecutor or the accused to ask, and which does not seem unreasonable.

129. (A) At the request of the prosecutor or accused person a witness may, by leave of the court, be re-called at any time before the time for the second address of the accused (or at a summary court-martial at any time before the finding of the court), for the purpose of having any question put to him through the officer holding the trial or conducting the proceedings. Re-calling of witnesses and calling of witnesses in reply.

(B) A witness may, in special cases, be allowed by the court to be called or re-called by the prosecutor, before the time for the second address of the accused, for the purpose of rebutting any material statement made by a witness for the defence upon his examination by the accused on any new matter which the prosecutor could not reasonably have foreseen.

(C) Where the accused has called witnesses to character, the prosecutor, before the time for the second address of the accused may call or re-call witnesses for the purpose of proving

a previous conviction or entries in the defaulters' book against the accused.

(iv) The court may call or re-call any witness at any time before the finding, if it considers that it is necessary for the ends of justice.

(a) The officer conducting the proceedings should also put to the witness any question relevant to the answer given, when, if the witness was re-called at the request of the prosecutor, the accused or if he was re-called at the request of the accused, the prosecutor, requires him to put.

(a) (c) These paragraphs are inapplicable to summary courts-martial where there is no prosecutor. Paragraph (d) will, however, admit of the officer holding the trial calling or re-calling witnesses in similar circumstances when the ends of justice require. See also Rule 125.

(d) The power of calling a new witness should, except as mentioned in the preceding paragraph, only be exercised by the court in cases of unforeseen witnesses becoming available, or of some exceptional circumstances, and should not be exercised to supplement any negligent conduct on the part of the prosecution. If a new witness is so called, the court should ordinarily allow him to be cross-examined by the other parties. If a witness is re-called, the questions asked should be limited to one or two questions relating to the evidence previously given by that witness.

It is very desirable that no witness should be called or re-called after the second address of the accused as otherwise some irregularity is introduced into the proceedings because, if new matter is introduced by such witness, it is necessary for the court, if so requested, to allow the prosecutor and the accused, respectively, to call witnesses in reply, and the accused to address the court with respect to such evidence, and the judge-advocate to supplement his summing up by a reference to such evidence. This remark, however, will not apply where the questions put to a witness re-called are limited as before suggested.

Addresses

Addresses may be in writing

130. All addresses by the prosecutor and the accused and the summing-up of the judge-advocate may either be given orally or be in writing, and, if in writing, shall be read in open court.

The summing-up of the judge-advocate should, however, invariably be in writing.

Insanity.

Provision as to finding of insanity.

131. Where the court finds either that the accused is of unsound mind and consequently incapable of making his defence or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the president or the officer holding the trial shall date and sign the finding; and the proceedings, upon being signed by the judge-advocate or superintending officer, if any, shall be at once transmitted to the confirming officer or the prescribed officer, as the case may be, to whom the case is reported under sub-section (1) of section 103-A of the Act.

Note

For form of finding, see Third Appendix, page 302.
Prescribed officer.—See rule 161-AA (1).

Preservation of Proceedings.

Preservation of proceedings.

132. (a) The proceedings of a court-martial (other than a summary court-martial) shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate-General in India, and there preserved for not less

in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

(n) The proceedings of a summary court-martial shall be preserved for not less than three years, with the records of the corps or department to which the accused belonged.

133. Every person tried by a court-martial shall be entitled on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings, a copy thereof, including the proceedings upon revision, if any, upon payment for the same of seven annas for the first two hundred words, and half that rate for each subsequent two hundred words, or part thereof.

Right of person tried to copies of proceedings.

134. (1) If the original proceedings of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the president, the judge-advocate, the superintending officer or the officer holding the trial, may be accepted in lieu of the original.

Loss of proceedings.

(2) If there is no such copy, and sufficient evidence of the charge, finding, sentence and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof lost.

(3) In any case above in this rule mentioned, the finding and sentence, if requiring confirmation, may be confirmed, and shall be as valid as if the original proceedings, or part thereof had not been lost.

(4) If in a case where confirmation of a finding or finding and sentence is required the proceedings, or part thereof, were lost before confirmation, and there is no such copy or evidence, or the accused refuses such assent, as above-mentioned, the accused may be tried again, and on the issue of an order convening the court for the trial, the finding and sentence of the previous court, of which the proceedings were so lost, shall be null.

(5) *Sufficient evidence*.—This may be obtained from the rough notes of the judge-advocate, or member of the court, finding and sentence, which should be an officer or members procured if practicable from any available source.

Irregular Procedure when no injustice is done

135. Whenever it appears that a court-martial had jurisdiction to try any person and that that person was charged with some offence or offences under the Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence may (if confirmation is necessary) be confirmed, and shall, if so confirmed, and in all cases where confirmation is not necessary be valid notwithstanding any deviation from these rules, or any defect or objection, technical or other, unless

Validity of irregular procedure in certain cases.

it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

This rule will prevent a miscarriage of justice arising in consequence of defects in the procedure which do not affect the real merits of the case. These defects will usually be of a technical character as any substantial defects, such as taking illegal evidence by accepting hearsay, or using a copy of a document when the original ought to have been produced, or calling a witness without proper notice to the accused, or refusing to admit evidence adduced by the accused, would ordinarily cause injustice to the person charged. The court should never allow any technicality to interfere with the accused making his defence in the fullest manner, and while as a whole disregarding technicalities in favour of what they consider to be, in substance, fairness for the purposes of the trial, they must recollect that even a disregard of a technicality may, in some cases, cause injustice, as the object of most technical rules is to prevent injustice. Before, therefore, a confirming officer, in reliance on this rule, confirms a finding and sentence in any respect irregular, he must take care to ascertain that no injustice, however small, has been done to the accused, and the preferable course is, where possible, to send the case back for revision or for another trial. In every such case the confirming officer will call the attention of the officer responsible for the irregularity to the deviation from the rule, or the defect in the proceedings, as officers will be held responsible for such deviation or defect, even though under this rule the conviction of the person tried may be upheld.

It may be convenient to note here, that if, after confirmation, the charges or the finding thereon are declared to be invalid, the trial must be treated as null, and consequently the person convicted must be relieved from all consequences of his conviction, and all record of such conviction must be erased, but in cases where the sentence alone is invalid the finding will stand good, and therefore the person convicted will suffer the forfeitures and other penalties which are consequential on conviction. An invalid sentence can, however, be dealt with by one of the higher authorities acting under Indian Army Act, section 103.

Offences of Witnesses and others.

Offences of
witnesses, and
others.

136. When any court-martial is of opinion that there is ground for inquiring into any offence specified in section 33 of the Act and committed before it or brought under its notice in the course of its proceedings, or into any act done before it or brought under its notice in the course of its proceedings which would, if done by a person subject to the Act, have constituted such an offence, such court-martial may proceed as follows, that is to say—

(A) If the person who appears to have committed the offence is subject to the Act, the court may bring his conduct to the notice of the proper military authority, and may also order him to be placed in military custody with a view to his punishment by an officer exercising authority under section 20 of the Act or to his trial by court-martial.

(a) If the person who appears to have done the act is subject to the Army Act, the court may bring his conduct to the notice of the proper military authority.

(c) If the person who appears to have done the act is subject neither to the Act nor to the Army Act, then in the case of acts which would, if done by a person subject to the Act, have constituted an offence under clause (a) of section 33 of the Act, the officer who summoned the witness to appear or the officer conducting the proceedings of the court-martial, as the case may be, may forward a written complaint to the nearest Magistrate of the first class having

jurisdiction, and in the case of acts which would, if done as aforesaid, have constituted an offence under clause (b) or clause (c) of the said section, the Court, after making any preliminary enquiry that may be necessary, may send the case to the nearest Magistrate of the first class having jurisdiction for enquiry or trial in accordance with section 476 of the Code of Criminal Procedure, 1898.

Act done.—This includes an illegal omission, see Indian Army Act, section 7 (23), and Indian Penal Code, section 32.

When a person subject to the Indian Army Act commits an offence under clause (a) or (b) of section 38, or when a corresponding offence is committed by a person subject to the (British) Army Act or by a civilian, accepting an apology sufficient to the more severe measures (rule 65, note) the best course is, interrupt the proceedings at the court.

Courts-martial should exercise the greatest discretion in instituting proceedings which may result in the institution of Indian Army Act for the or against a person subject to a corresponding offence. It is a verdict shown that it did not him to be mistaken or, on accepted another version of what took place. Before instituting proceedings as indicated in this rule against a witness the court should be satisfied that there are good grounds for believing that the witness has willfully given false evidence on some point which is material to the issue, and that his conviction is likely. The credit of another witness is a point material to the issue.

When it is likely that a witness will be prosecuted for giving false evidence the exact words used, in the language in which the evidence was given, should be recorded. See Rule 78 (c) and note.

(a) In the case of a person subject to the Indian Army Act, the court-martial may, in its discretion, either merely report his conduct to the proper military authority, or may in addition order him into military custody pending disposal of his case.

If a person is so ordered into custody this fact should be mentioned in the report, and it then becomes the duty of the officer receiving the report to see that the case is promptly investigated in accordance with section 124 (3) of the Indian Army Act. The report should be in sufficient detail to place the officer in full possession of the facts and enable him to exercise his discretion whether to order trial by court-martial if he is competent to do so, or to direct other summary disposal of the case, or to refer it to superior authority.

Proper military authority.—See Rule 2 (a).

This will depend on the status of the offender, and the authority under whose orders the court has been convened.

In the case of a summary court-martial the officer holding the Trial would, ordinarily, report to the officer commanding the division or brigade, and a general or district court-martial would report to the convening officer, observing in each case the usual channel of correspondence.

Trial by court-martial.—As explained in the notes to section 38 of the Indian Army Act, the members of a court-martial reporting an offender under this rule are individually disqualified (Rule 29 (a) (i) and (v)) from trying him on charges arising out of their report. Thus although there is no restriction similar to that contained in section 23 of the (British) Army Act, the result is practically the same, and the officer to whom the case is finally referred, if he decides on trial, must convene a new court for the purpose. For similar reasons it is undesirable that a commanding officer should try by summary court-martial a person under his command who has offended against his authority when holding a summary court-martial or when sitting as a member of a general or district court-martial. He could, save in grave emergency, only do so with the sanction of superior authority, which should, therefore, as a rule be withheld.—Indian Army Act, section 74, proviso (b).

(a) Over a person subject to the (British) Army Act a court-martial convened or assembled under the Indian Army Act has, as such, no authority, and cannot as a court order him into military custody. This clause, therefore, enables the court merely to report offences of contempt or of giving false evidence committed by such persons to the proper military authority for disposal under the Army Act. The president (if a British officer) or the superintending officer has, however, in his individual capacity, authority over such an offender, if his junior in rank

and may, in that capacity, order such offender into military custody under the provisions of section 45 of the Army Act. This individual authority should be rarely exercised and, as a rule, only when justified by cases of gross disrespect or violence towards the court.

If the trial of a person against whom action has been taken under clause (a) of this rule is ordered, the charge can only be framed under section 49 of the Army Act as a court-martial convened under the Indian Army Act is not a "court-martial" for the purposes of charges under section 28 of the (British) Army Act.

For the converse case, *ie.*, when a person subject to the Indian Army Act commits contempt or gives false evidence before a court-martial convened under the (British) Army Act, see notes to Indian Army Act, section 28.

(C) This clause deals with *civilian offenders*, sections 196 and 476 of the Code of Criminal Procedure provide for the institution of proceedings for certain offences against the Indian Penal Code on the written complaint of the public servant concerned or of the court before which the offence complained of was committed. A court-martial is a "criminal court" for the purposes of the above sections and is also a "court of justice" for the purposes of the Indian Penal Code. See Code of Criminal Procedure, section 6 and Indian Penal Code, section 20. The effect of this is that all the acts and omissions which are punishable under section 38, clause (a) of the Indian Army Act when committed by persons subject to that Act, are, when committed by civilians, offences under sections 174, 175, 178 and 179 of the Indian Penal Code, for which the officer who summoned the witness to appear or the officer conducting the proceedings of the court-martial, as the case may be, can institute proceedings under section 195, sub-section (1), clause (d) of the Code of Criminal Procedure; and that all acts and omissions which are punishable under section 38, clauses (b) and (c) of the Indian Army Act when committed by persons subject to that Act are, when committed by civilians, offences under sections 193, 194 and 228 of the Indian Penal Code for which the aggrieved court-martial can institute proceedings under section 476 of the Code of Criminal Procedure. Before instituting such proceedings the officer (in the case of offences corresponding to those in clause (a) of section 38, I. A. A.) and a court-martial (in the case of offences corresponding to those in clauses (b) and (c) of section 38 of the I. A. A.) must *prima facie* be satisfied that a definite offence has been committed by some definite person or persons against whom proceedings in a criminal court are to be taken. It is not sufficient that the circumstances may raise some sort of a suspicion against some one. In such a case the officer or the court-martial, as the case may be, should either allow the matter to drop, or should make or hold a preliminary enquiry to see who is to be prosecuted and for what. A court's decision to institute proceedings must be a judicial one, *ie.*, either based on what the court has itself heard or seen and considered, or on evidence taken before it and considered. Similarly an officer's decision to institute proceedings must be a reasonable one, based on sufficient grounds.

The report to the magistrate may be in letter form, and should be sufficiently detailed to place him in full possession of all the materials on which the decision to prosecute was based. It should set forth the name and identity of the person accused and of the witnesses who can substantiate the accusation. A narrative of the events complained of should be included in the report and a record of the evidence taken in the preliminary inquiry (if any) attached.

In the case of a person subject to the Air Force Act the proper course is to report the offence to the proper Air Force authority, though proceedings could be taken under clause (C) of this rule. Neither a court-martial convened or assembled under the Indian Army Act nor, ordinarily, a "British officer" in his individual capacity can order a person subject to the Air Force Act into air force custody, when, however, by reason of the application of section 184-A of the Air Force Act, the British officer has powers as if he were an Air Force officer in relation to the person subject to the Air Force Act, he could if necessary, order that person into air force custody.

Cases outside British India.—If a case arises in which it appears necessary to report the offence to the proper Air Force authority, though proceedings could be taken under clause (C) of this rule. Neither a court-martial convened or assembled under the Indian Army Act nor, ordinarily, a "British officer" in his individual capacity can order a person subject to the Air Force Act into air force custody, when, however, by reason of the application of section 184-A of the Air Force Act, the British officer has powers as if he were an Air Force officer in relation to the person subject to the Air Force Act, he could if necessary, order that person into air force custody.

of the Code of Criminal Procedure or the court-martial as the ascertain that the civilian India. Pending a decision on itself with excluding him are held, if such a court places which, though in India 41 of the Indian Army Act if generally be the person ninal law as against person whether any civilian whom it is proposed to prosecute is subject to his jurisdiction

SECTION 5.—SUMMARY GENERAL COURT-MARTIAL.

The foregoing rules in this Chapter shall not, save as hereinafter mentioned, apply to summary general court-martial which shall be subject to the following rules:—

137. The court may be convened and the proceedings of the court recorded in accordance with the form in the third appendix to these rules, with such variations as the circumstances of each case may require. Convening the court and record of proceedings.

138. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Act. Charge.

139. The court may be sworn at the same time to try any number of accused persons then present before it, but, except so far as accused persons are tried together for an offence committed collectively, the trial of each accused person will be separate. Trial of several accused persons.

140. (a) The names of the president and members of the court shall be read over to the accused who shall thereupon be asked if he objects to be tried by any of these officers. Challenges.

(b) Any objection will be decided as provided for in section 80 of the Act—the vacancies being filled from among the waiting members (if any) or by fresh members being appointed by the convening officer.

141. (a) As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, an oath or affirmation shall be administered to every member in such of the forms laid down in Rule 35 as shall be appropriate, or in such other form to the same purport as the court ascertain to be according to his religion or otherwise binding on his conscience. Swearing or affirming the court.

(b) If an interpreter or superintending officer has been appointed, the appropriate oath or affirmation, as laid down in Rule 36, shall be administered to him.

(c) All oaths and affirmations shall be administered by a member of the court or by some person empowered by the court to do so.

(d) If a summary general court-martial consists solely of Indian officers a superintending officer is required. The cases in which such a court is convened will however be rare as it will generally be more convenient to assemble a court of one British and two Indian officers instead of one of three Indian officers and a British superintending officer.

142. When the court are sworn or affirmed, the president shall state to the accused then to be tried, the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and shall ask the accused whether he is guilty or not of the offence. Arraignment.

143. If a special plea to the General jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer. Plea to jurisdiction.

See Rule 41 and note.

144. (a) The witnesses for the prosecution will be called and the accused shall be allowed to cross-examine them and to call any available witnesses for his defence. Evidence.

(n) An oath or affirmation as laid down in Rule 126 shall be administered to every witness, before he gives his evidence, by one of the persons specified in that rule.

Defence.

145. The accused shall be asked what he has to say in his defence, and shall be allowed to make his defence. He may be allowed to have any person to assist him during the trial, whether a legal adviser or any other person.

If the person assisting is an officer subject to military law or a counsel (see Rule 87 (B)) he may be allowed full privileges of address, etc.

Record of the evidence and defence.

146. The President of the Court shall take down or cause to be taken down a brief record of the evidence of the witnesses at the trial and of the defence of the accused; the record so taken down shall be attached to the proceedings:

Provided that, if it appears to the convening officer that military exigencies or other circumstances prevent compliance with this provision, he may direct that the trial may be carried on without any such brief record being taken down.

If the accused pleads "Guilty" the summary of evidence, if any, may be read and attached to the proceedings, and it shall not be necessary for the Court to hear witnesses for the prosecution respecting matters contained in the summary of evidence so read.

It would hardly ever be necessary for the convening officer to give such a direction as is mentioned in the proviso. If he does so, he must record it in his order convening the Court and state shortly the exigencies or other circumstances which appear to him to prevent compliance with this rule.

Finding and sentence

147. The court shall then be closed to consider its finding. If the finding on any charge is "guilty" the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

As to voting of members, see Indian Army Act, section 81.

For votes required before a sentence of death can be passed, see section 87 of the Act.

Proceedings after sentence or finding

148. (a) If the proceedings do not require confirmation, the result shall be announced in open court and the sentence carried into effect as soon as possible.

(b) If the proceedings require confirmation they shall be transmitted without delay to the confirming officer and the sentence (if any) carried out as soon as possible after his confirmation has been received.

(A) See section 98 of the Act as to when confirmation is necessary.

Carried into effect—If a sentence of imprisonment not requiring confirmation is passed, the president, when passing sentences, must consider the provisions of section 3 (1) of the Indian Army (Suspension of Sentences) Act (see Part III). The notes to that section should in such cases be consulted.

(B) *Carried out*—e.g., if the sentence is one of transportation or imprisonment, unless the sentence has been suspended or the confirming officer has directed that the offender be not committed pending the orders of a superior military authority as to suspension of sentence.

Adjournment.

149. (a) A summary general court-martial may adjourn from time to time and from place to place and may when necessary view any place.

(b) The proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members, when the court may be closed.

Investigation of Charges and Trial by Court-Martial. 247

150. The foregoing rules (Mitigation of sentence on Application of partial confirmation), 61 (Formality in or excess of in- rules), 62 (Formality in or excess of proceedings after finding) of insanity), 132 (Preservation of person tried to copies of proceedings), 134 (Loss of proceedings), and 135 (Validity of irregular procedure in certain cases) —shall, so far as practicable, apply as if a summary general court-martial were a district court-martial.

151. Any statement in an order convening a summary general court-martial as to the opinion of the convening officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated. Evidence of opinion of convening officer.

SECTION 6—EXECUTION OF SENTENCES

152. A warrant for the committal of a person sentenced by a court-martial to a civil prison under the provisions of section 107 of the Act shall be in one of the forms given in the Fourth Appendix to these Rules. Such warrant shall be signed by the commanding officer of the prisoner or by a staff officer of the division, brigade or station. Committal warrants

153. Any warrant issued under the provisions of section 100 of the Act shall be in one of the forms given in the Fourth Appendix to these Rules, and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer. Warrants under section 109 of the Act

154. (a) A sentence of dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under sentence, or from such subsequent date as may be specified by the commanding officer at the time of such promulgation. Sentence of dismissal or suspension.

Provided that, when dismissal is combined with imprisonment which is carried out in military custody or with field punishment, the dismissal shall not take effect until the date on which the prisoner is duly released from military custody, or until the completion of the field punishment, unless such field punishment is remitted by competent authority.

Provided also that, when dismissal is combined with transportation or with imprisonment which is carried out in a civil prison, the dismissal shall not take effect until the date on which the prisoner is received into a civil prison.

(b) A sentence of suspension awarded by a court-martial shall, if no confirmation is necessary, take effect from the date on which it is signed by the president; if confirmation is necessary, such sentence shall take effect from the date on which, having been duly confirmed, it is communicated to the offender.

(c) A discharge certificate must be furnished to the person dismissed. See Rule 11.

Such subsequent date—It may sometimes, in order to keep a person sentenced to dismissal still subject to military law for a short period, be expedient for the commanding officer to specify a subsequent date. If he considers such action desirable he must do so at the time of the promulgation of the sentence to the person and he should record the date he specifies in the minute of promulgation. When a commanding officer exercises this option of specifying a subsequent date, the date specified must be strictly limited by the requirements of the case. For instance in

(b) An oath or affirmation as laid down in Rule 126 shall be administered to every witness, before he gives his evidence, by one of the persons specified in that rule.

Defence.

145. The accused shall be asked what he has to say in his defence, and shall be allowed to make his defence. He may be allowed to have any person to assist him during the trial, whether a legal adviser or any other person.

If the person assisting is an officer subject to military law or a counsel (see Rule 87 (B)) he may be allowed full privileges of address, etc.

Record of the evidence and defence.

146. The President of the Court shall take down or cause to be taken down a brief record of the evidence of the witnesses at the trial and of the defence of the accused; the record so taken down shall be attached to the proceedings:

Provided that, if it appears to the convening officer that military exigencies or other circumstances prevent compliance with this provision, he may direct that the trial may be carried on without any such brief record being taken down.

If the accused pleads "Guilty" the summary of evidence, if any, may be read and attached to the proceedings, and it shall not be necessary for the Court to hear witnesses for the prosecution respecting matters contained in the summary of evidence so read.

It would hardly ever be necessary for the convening officer to give such a direction as is mentioned in the proviso. If he does so, he must record it in his order convening the Court and state shortly the exigencies or other circumstances which appear to him to prevent compliance with this rule.

Finding and sentence

147. The court shall then be closed to consider its finding. If the finding on any charge is "guilty" the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

As to voting of members, see Indian Army Act, section 81.

For votes required before a sentence of death can be passed, see section 87 of the Act.

Proceedings after sentence or finding

148. (a) If the proceedings do not require confirmation, the result shall be announced in open court and the sentence carried into effect as soon as possible.

(b) If the proceedings require confirmation they shall be transmitted without delay to the confirming officer and the sentence (if any) carried out as soon as possible after his confirmation has been received.

(A) See section 93 of the Act as to when confirmation is necessary.

Carried into effect.—If a sentence of imprisonment not requiring confirmation is passed, the president, when passing sentences, must consider the provisions of section 3 (1) of the Indian Army (Suspension of Sentences) Act (see Part III). The notes to that section should in such cases be consulted.

(B) *Carried out.*—e.g., If the sentence is one of transportation or imprisonment, unless the sentence has been suspended or the confirming officer has directed that the offender be not committed pending the orders of a superior military authority as to suspension of sentence.

Adjournment.

149. (a) A summary general court-martial may adjourn from time to time and from place to place and may when necessary view any place.

(b) The proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members, when the court may be closed.

150. The foregoing rules—59 (Mitigation of sentence on partial confirmation), 61 (Confirmation notwithstanding informality in or excess of punishment), 80 (Transmission of proceedings after finding), 131 (Provision as to finding of insanity), 132 (Preservation of proceedings), 133 (Right of person tried to copies of proceedings), 134 (Loss of proceedings), and 135 (Validity of irregular procedure in certain cases)—shall, so far as practicable, apply as if a summary general court-martial were a district court-martial.

Application of rules.

151. Any statement in an order convening a summary general court-martial as to the opinion of the convening officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

Evidence of opinion of convening officer

SECTION 6—EXECUTION OF SENTENCES

152. A warrant for the committal of a person sentenced by a court-martial to a civil prison under the provisions of section 107 of the Act shall be in one of the forms given in the Fourth Appendix to these Rules. Such warrant shall be signed by the commanding officer of the prisoner or by a staff officer of the division, brigade or station

Committal warrants

153. Any warrant issued under the provisions of section 109 of the Act shall be in one of the forms given in the Fourth Appendix to these Rules and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer

Warrants under section 109 of the Act

154. (a) A sentence of dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under sentence, or from such subsequent date as may be specified by the commanding officer at the time of such promulgation

Sentence of dismissal or suspension.

Provided that, when dismissal is combined with imprisonment which is carried out in military custody or with field punishment, the dismissal shall not take effect until the date on which the prisoner is duly released from military custody, or until the completion of the field punishment, unless such field punishment is remitted by competent authority

Provided also that, when dismissal is combined with transportation or with imprisonment which is carried out in a civil prison, the dismissal shall not take effect until the date on which the prisoner is received into a civil prison

(b) A sentence of suspension awarded by a court-martial shall, if no confirmation is necessary, take effect from the date on which it is signed by the president, if confirmation is necessary, such sentence shall take effect from the date on which, having been duly confirmed, it is communicated to the offender

(c) A discharge certificate must be furnished to the person dismissed. See Rule 11

Such subsequent date—It may sometimes, in order to keep a person sentenced to dismissal still subject to military law for a short period, be expedient for the commanding officer to specify a subsequent date. If he considers such action desirable he must do so at the time of the promulgation of the sentence to the person and he should record the date he specifies in the minute of promulgation. When a commanding officer exercises this option of specifying a subsequent date, the date specified must be strictly limited by the requirements of the case. For instance in

the case of a person sentenced out of India to dismissal alone, or to dismissal combined with imprisonment which is carried out locally either in military custody or for special reasons in local civil custody (section 106 of the Act), the subsequent date might be "date of disembarkation" or "date of embarkation" according to whether the intention is to despatch the person in India on a transport or by a private vessel. It is obviously desirable to keep the person subject to military discipline while travelling on a transport or until he can be despatched to India. If the person is to be sent by a transport the commanding officer can enter in the discharge certificate "date of disembarkation" as the date from which the dismissal takes effect.

Civil prison.—That is a prison maintained under the Prisons Act (IX of 1894). The effect of the second proviso therefore is that a prisoner under sentence of dismissal combined with imprisonment which is carried out in a civil prison or with transportation remains subject to the Act until he is received into a civil prison in India. The commanding officer should enter on the discharge certificate "date of admission into a civil prison" as the date from which the dismissal takes effect.

SECTION 7.—FIELD PUNISHMENT

Field
Punishment

155. (1) A court-martial or an officer exercising authority under section 20 of the Act may, for the purpose of awarding field punishment under the act sentence an offender for a period not exceeding, in the case of a court-martial, three months, and in the case of such an officer, twenty-eight days, to one of the following punishments namely—

(a) Field Punishment No. 1

(b) Field Punishment No. 2.

(2) Where an offender is sentenced to field punishment No. 1, he may, during the continuance of his sentence, unless the court-martial or the officer, as the case may be, otherwise directs, be punished as follows:—

(a) He may be kept in irons, that is to say, in fetters or hand-cuffs or both fetters and handcuffs, and may be secured so as to prevent his escape.

(b) When in irons, he may be attached for a period or periods not exceeding two hours in any one day to a fixed object but he must not be so attached during more than three out of any four consecutive days, nor during more than twenty-one days in all.

Explanation (1).—The offender must be attached so as to be standing firmly on his feet which, if tied, must not be more than twelve inches apart, and it must be possible for him to move each foot at least three inches. If he is tied round the body there must be no restriction of his breathing. If his arms or wrists are tied, there must be six inches of play between them and the fixed object. His arms must hang either by the side of his body or behind his back.

Explanation (2).—For the purpose of this punishment, irons should be used when available, but straps or ropes may be used in lieu of them when necessary. Any straps or ropes used for this purpose must be of sufficient width to inflict no bodily harm, and leave no permanent mark on the offender.

(c) He may be subjected to the like labour, employment and restraint, and dealt with in like manner as if he were undergoing a sentence of rigorous imprisonment.

(3) Where an offender is sentenced to field punishment No. 2, the provisions of sub-rule (2) with respect to field

punishment No. 1 shall apply in his case except that he shall not be liable to be attached to a fixed object as provided in clause (b) of that sub-rule.

(4) Every portion of a field punishment shall be inflicted in such a manner as is calculated not to cause injury or leave any permanent mark on the offender; and a portion of a field punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offenders health.

(5) Field punishment will be carried out regimentally when the unit to which the offender belongs or is attached is actually on the move, but when the unit is halted at any place where there is a provost-marshal the punishment will be carried out under the orders of that officer.

(6) When the unit to which the offender belongs or is attached is actually on the move, an offender awarded field punishment No. 1 shall be exempt from the operation of clause (b) of sub-rule (2), but all offenders awarded field punishment shall march with their unit, carry their arms and accoutrements, perform all their military duties as well as extra fatigue duties, and be treated as defaulters.

CHAPTER V

COURTS OF INQUIRY

Losses or thefts of arms.

156. (A) Whenever any weapon or part of a weapon, which forms part of the equipment of a half squadron, battery, company or other similar unit, and in respect of the loss or theft of which a fine may be imposed under rule 157 is lost or stolen, a court of inquiry shall be assembled, under the orders of the officer commanding the army, army corps, division or independent brigade, to investigate the circumstances under which the loss or theft occurred.

(B) The officer who assembled the court shall direct it to record an opinion as to the circumstances of the loss or theft.

157. (A) The officer commanding the army, army corps, division or independent brigade shall then record his opinion on the circumstances of the loss or theft, and may impose for each weapon or part of a weapon lost or stolen collective fines to the extent hereinafter specified on the Indian officers, non-commissioned officers, and men of such unit or upon so many of them as he considers should be held responsible for the occurrence—

	Rs.
Maxim or Vickers Gun	1,500
Hotchkiss or Lewis Gun	1,000
Rifle or Carbine	500
Pistol	175
Barrel of a Machine Gun	100
Bolt of a rifle, carbine or Lewis Gun	50
Magazine of a Lewis Gun	50
Lock of a Maxim or Vickers Gun	50
Breech Block of a Hotchkiss Gun	50
Grenade	20

Courts of Inquiry when rifle etc. are lost or stolen.

Collective fine may be imposed.

(b) Such fine will be assessed as a percentage on the pay of the individuals on whom it falls.

Regulations for courts of inquiry other than courts of inquiry held under section 126 of the Act.

Courts of
inquiry.

158. (A) A court of inquiry is an assembly of officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.

(B) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps

(C) The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation

(D) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific, and shall state the general character of the information required. They shall also state whether a report is required or not.

(E) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry except a prisoner of war who is still absent

(F) Save in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or military reputation of a person subject to military law, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witnesses in defence of his character or military reputation

(G) It is the duty of a court of inquiry to put such questions to a witness as they think desirable for testing the truth or accuracy of any evidence he has given, and otherwise for eliciting the truth.

(H) When a court of inquiry is held on prisoners of war, and in any other case in which the officer who assembled the court has so directed, the evidence shall be taken on oath or affirmation, in which case the court shall administer the same oath or affirmation to witnesses as if the court were a court-martial

The officer who assembled the court shall, when the court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the court to record their opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with or under, or aided the enemy he shall also direct the court to record their opinion in the case of a returned prisoner of war, whether he returned, as soon as possible, to the service, and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The officer who assembled the court shall also record his own opinion on these points. In

other cases the court shall give no opinion on the conduct of any person unless so directed by the officer who assembled the court.

(i) The members of the court shall not themselves be sworn or affirmed, but when the court is a court of inquiry or recovered prisoners of war the members shall make the following declaration —

I, A B, do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which I became a prisoner of war, according to the true spirit and meaning of the Regulations of the Army; and I do further declare, upon my honour, that I will not on any account, or at any time, disclose or discover my own vote or opinion, or that of any particular member of the court, unless required to do so by competent authority.

(j) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(k) The whole of the proceedings of a court of inquiry shall be forwarded by the president to the officer who assembled the court.

(l) The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to Military law, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for wilfully giving false evidence before that court.

(m) Any person subject to the Act who is tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, and, unless the Commander-in-Chief in India sees reason to order otherwise, any person so subject whose character or military reputation is, in the opinion of the said Commander-in-Chief, affected by anything in the evidence before, or in the report of a court of inquiry, shall be entitled to a copy of the proceedings of the court, including any report made by the court, on payment at the rate laid down in Rule 133 for copies of the proceedings of courts-martial.

(n) See Rule 163 as to the authorities who can remit the forfeiture of pay and allowances incurred by absence as a prisoner of war. If the officer who assembled the court is not one of these authorities, he should forward the proceedings with his recommendation, to one of these authorities. A court of inquiry on a prisoner of war who is still absent may be assembled in order to assist the authorities prescribed in Rules 163 (C) and 163 A, in determining what remission of forfeiture of pay and allowances shall be ordered and what provision under section 62 A of the Act shall be made for the dependants of such prisoner of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. See para 273, Regulations for the Army in India.

Regulations for courts of inquiry under section 126 of the Act for the purpose of determining the illegal absence of persons subject to that Act.

159. (A) A court of inquiry under section 126 of the Act shall, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in that section. Courts of inquiry as to illegal absence

(n) They shall take down the evidence given them in writing and at the end of the proceedings shall make a declaration of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(c) The commanding officer of the absent person shall enter in the court-martial book of the corps or department a record of the declaration of the court and the original proceedings will be destroyed.

(d) The court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given, and otherwise for eliciting the truth and the court in making their declaration shall give due weight to the evidence of all such witnesses.

(f) A court of inquiry shall administer the same oath of affirmation to the witnesses as if the court were a court-martial but the members of such court shall not themselves be sworn or affirmed.

(g) *Same oath or affirmation*—See rule 125

CHAPTER VI

PREScribed OFFICERS, AUTHORITIES AND OTHER MATTERS

160. This rule was cancelled by Army Department Notification No. 274, dated 20th February 1925, see page 519 post.

160A. In the Act and in these Rules the expression "British Officer" in relation to a person subject to the Act includes a person holding a commission in His Majesty's Air Force when the person subject to the Act is serving under any of the following conditions, namely:—

- (a) When he is a member of a body of His Majesty's Military Forces acting with a body of His Majesty's Air Force which is on active service.
- (b) When he is a member of a body of His Majesty's Military Forces acting with a body of His Majesty's Air Force under or within any Command whatsoever within which, or in any area or place in which, by reason of regulations made by the Army Council and Air Council, or of orders, made in pursuance of such regulations, section 184-A of the Army Act or a portion thereof or section 184-A of the Air Force Act or a portion thereof applies generally or in which both of those sections or portions of both of those sections apply generally.
- (c) When he is being conveyed on any vessel employed as a transport or troopship.
- (d) When he is serving in or is a patient in any hospital or medical unit in which any officer of His Majesty's Air Force is on duty or is a patient.
- (e) When he is serving in any place in which, or with any body of His Majesty's Military Forces with which, there is present any officer of His Majesty's Air Force who is subject to military law.

- (f) When he is a member of a body of His Majesty's Military Forces acting in an emergency with a body of His Majesty's Air Force and an order in writing is made by the officers commanding the two bodies respectively stating that an emergency exists and that it is necessary for officers of His Majesty's Air Force to exercise command over persons subject to the Act

A copy of every order made under this condition shall forthwith be sent to the Governor General in Council.

- (g) When he is serving in any place in which, or with any body of His Majesty's Military Forces with which, there is present any officer of His Majesty's Air Force and the Governor General in Council has by special order declared that it is necessary for officers of His Majesty's Air Force to exercise command over persons subject to the Act in that place or with that body of military forces.

161. (1) Each of the following separate bodies of persons subject to the Act shall be a "corps" for the purposes of Chapter II and section 30 (c) of the said Act and of Chapters II and III of these Rules: "Corps" prescribed under section 7(9) of the Act.

- (i) Each bodyguard.
- (ii) Each group or ungrouped regiment of Indian cavalry.
- (iii) The Royal Artillery, comprising the Indian personnel enrolled under the Act, of the Royal Artillery, (British, or Indian) except the followers (Fort Armaments).
- (iv) The Corps of Watchers.
- (v)
- (vi)
- (vii) The Corps of Followers—Royal Artillery (Fort Armaments).
- (viii) The Indian Army Ordnance Corps.
- (ix) The Proof and Experimental Establishment, Balasore.
- (x) Each Corps of Sappers and Miners.
- (xi) The Indian Corps of Clerks (Indian Wing).
- (xii) The Indian Signal Corps.
- (xiii) Each Corps or each ungrouped battalion (as the case may be) of Indian pioneers, each regiment or each ungrouped battalion (as the case may be) of Indian Infantry, or, in the case of grouped Gurkha Regiments, each group of Indian infantry.
- (xiv) The Indian Army Service Corps.
- (xv-a) Each Indian Garrison Company.
- (xv) The Indian Hospital Corps.
- (xvi) The Indian Army Veterinary Corps.
- (xvii) The Corps of British cavalry, comprising the Indian personnel of British cavalry units.
- (xviii) The Corps of British infantry, comprising the Indian personnel of British Infantry units.

(xix) The Works Corps.

(xx) Any other separate body of persons subject to the Act employed on any service and not attached to any of the above corps or to any department.

(n) Every British or Indian unit in which a court-martial book is maintained shall be a "corps" for the purposes of section 126 of the Act and Rule 159.

(c) For the purposes of every other provision of the said Act and rules each of the following separate bodies shall be a "corps":—

- (i) Each regiment of British cavalry or battalion of British infantry.
- (ii) Each bodyguard
- (iii) Each regiment of Indian cavalry
- (iv) Each brigade, group or similar body of Royal Artillery.
- (v) Each unbrigaded or ungrouped battery, section or ammunition column of Royal Artillery.
- (vi) Each Corps of Sappers and Miners
- (vii) The Corps of Watchers.
- (viii) Each signal squadron, company or detached troop
- (ix) Each battalion of Indian infantry or of pioneers
- (x) Each reserve centre.
- (xi) Each cavalry brigade train, divisional train headquarters reserve park headquarters, company (excepting a district supply company) or dépôt of the Indian Army Service Corps
- (xi-a) Each Indian Garrison Company when not attached to another body
- (xii) Each company of the Indian Hospital Corps.
- (xiii) Each section of the Indian Army Veterinary Corps.
- (xiv) Each Mechanical Transport Training Centre, Company or Repair shop.
- (xiv-a) Each Works battalion
- (xv) Any separate body of persons subject to the Act which is a "corps" under the provisions of clause (A) (xx) of this Rule.

For the purpose of Chapter II, etc.—The effect of this is that each of the bodies specified in clause (A) of this rule is a "corps" for the purposes of Enrolment, Attestation, Dismissal and Discharge, i.e., for all purposes connected with a person's service in the Army. For all other purposes (except those of section 126) the bodies mentioned in clause (c) are "corps".

The effect of rule 7, read with the forms of enrolment at present prescribed, is that every person enrolled under the Act must be enrolled either in some corps, as defined in clause (A) of this rule, or in some department, as defined in section 7 (II) of the Act.

(C) (f) In this clause a "group" means the batteries grouped together under an officer exercising a "Lieutenant-colonel's command".

(xi) "Dépôt" does not include a "Sub-dépôt of a Supply Dépôt Company".

Prescribed
officers under
section 14 of
the Act.

161-A. The prescribed officer for the purposes of section 14 of the Act shall, as regards Indian Military Medical pupils, be the Director-General, Indian Medical Service, and the

Surgeon-General or the Inspector-General of Civil Hospitals of the province within which the School to which the medical pupil belongs is situated.

162. The authorities empowered to reduce a non-commissioned officer to lower grade or to the ranks shall, on active service, include the officer commanding the forces in the field. Prescribed officers under s. 19 of the Act.

162-A. The prescribed officer for the purposes of section 49-A of the Act shall be the officer commanding the forces in the field, or, in the case of a sentence which he confirms or could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division, brigade or any detached portion of His Majesty's Forces within which the trial was held. Prescribed officers under s. 49-A of the Act.

163. Any penal deduction from the pay and allowances of a person subject to the Act, made under Chapter VII thereof may be remitted as hereinafter provided — Prescribed authorities under s. 67 of the Act.

(A) Any penal deduction from the pay and allowances of any such person may be remitted by the Governor General in Council.

(B) The commanding officer of any such person who has been absent without leave for a period not exceeding five days may, unless the person is convicted by a court-martial on a charge for such absence, remit the forfeiture of pay and allowances to which that absence renders him liable.

(C) A forfeiture of pay and allowances incurred by any such person owing to his absence as a prisoner of war may (unless it shall have been proved before a court of enquiry that he was taken prisoner through his own wilful neglect of duty, or that he served with or under, or aided, the enemy, or that he did not, as soon as possible, return to the service) be remitted by the Commander-in-Chief in India, by the officer commanding an army, army corps, division or independent brigade, or by the officer commanding the forces in the field.

163-A. The prescribed authorities for the purposes of section 52-A of the Act shall be the Commander-in-Chief in India and the officer commanding the division or brigade within which the headquarters or the depot of the corps, department or detachment to which the person belongs is situated. Prescribed authorities under s. 52-A of the Act.

164. The prescribed military authority for the purpose of sections 69 and 70 of the Act shall be the officer commanding the army, army corps, division, brigade or station in which the accused person is serving. Prescribed authorities under ss. 69 and 70 of the Act.

Provided that, in cases falling under section 41 or 42 of the Act, in which death has resulted, the prescribed military authority shall be the officer commanding the army, army corps, division or independent brigade in which the accused person is serving and no lower authority.

164-A. The prescribed officer for the purposes of section 102 of the Act shall, whenever any division or brigade is temporarily withdrawn from its territorial area, be the officer, not being below the rank of field officer, commanding the corresponding divisional or brigade area, within which the trial is held. Prescribed officer under s. 102 of the Act.

Provided that, when the officer who held the trial is himself the commander of such area, he shall forward the proceedings to superior authority.

When the trial is held on board a ship the prescribed officer shall be the officer commanding the troops on board the ship, or the officer who would have had power to deal with the proceedings had the trial been held at the port of disembarkation.

Provided that, when the officer who held the trial is himself the officer commanding the troops on board the ship, he shall forward the proceedings to the authority at the port of disembarkation.

Prescribed
officers and
manner of
custody under
section 103-A
of the Act.

164-AA. (1) The prescribed officer for the purposes of sub-section (2) of section 103-A of the Act shall be—

In the case of a trial by
summary court-
martial

The Authority empowered to
deal with the proceedings
of such a court under sec-
tion 102 of the Act

In the case of a trial by
summary general
court-martial

The convening officer or any
authority superior to him

(2) The prescribed officer for the purposes of sub-section (5) of section 103-A of the Act shall be the officer Commanding the army, army corps, division or brigade within the area of whose command the accused is in custody or is detained, and, in the case of an accused who has been found by a summary general court-martial to be of unsound mind, shall include the officer who has power to convene a summary general court-martial for the trial of that accused, and, in the case of an accused who has been found by a summary court-martial to be of unsound mind and who is in the custody of or is detained under the charge of, the corps, department or detachment to which he belongs, shall include the commanding officer of that corps, department or detachment.

Provided that where an officer who proposes to act as a prescribed officer under sub-section (5) of section 103-A of the Act is under the command of the Officer who has taken action in the case under sub-section (3) of that section, he shall ordinarily obtain the approval of such officer before he acts; but, if he is of opinion that military exigencies, or the necessities of discipline render it impossible or inexpedient to obtain such approval, he may act without obtaining such approval but shall report his action and the reasons therefor to such officer.

(3) For the purposes of sub-section (3) of section 103-A of the Act the manner in which an accused person shall be kept in custody shall be as follows:—

The accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

164-B. The prescribed officer for the purposes of section 112 of the Act shall be—

Prescribed
officers under
s. 112 of the
Act

- (a) As regards persons undergoing sentence in a civil prison or any other place. The Officer commanding the army, army corps, command, division, district, independent brigade or independent brigade area within the area of whose command the prisoner subject to such punishment may for the time be.

- (b) As regards persons convicted on active service. The officer commanding the forces in the field.

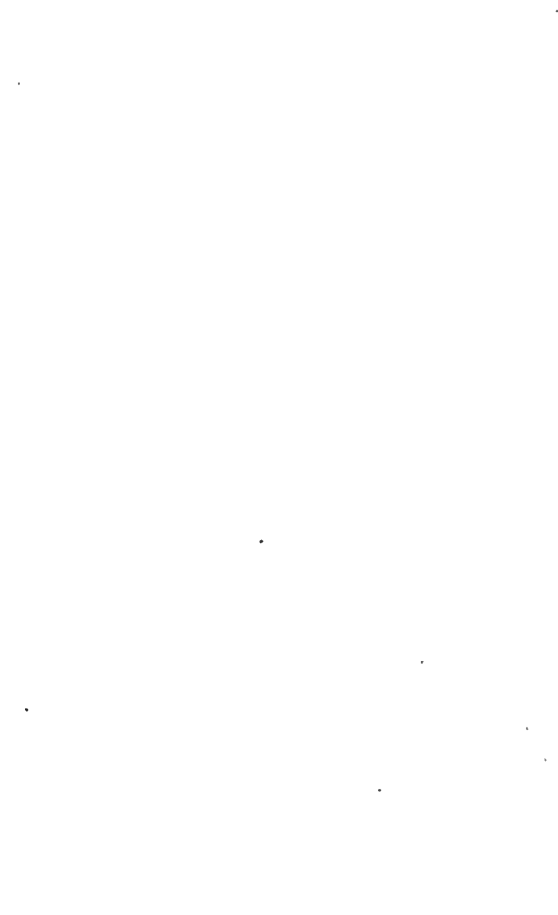
164-C. The prescribed officer for the purposes of sub-section (1) of section 91-A of the Act shall be the officer commanding the corps, department or detachment to which the person appears to have belonged or alleges that he belongs or had belonged.

Prescribed
officer under
s. 91-A of the
Act.

165. (A) The prescribed person for the purposes of section 114 of the act shall be the Accountant-General, Central Revenues.

Prescribed
persons under
ss. 114 and 115
of the Act.

(B) The prescribed person for the purposes of section 115 of the Act shall be the person referred to in paragraph (A) of this rule, and, so long as the commanding officer has under the Act the control of the property of the deceased person or lunatic or of the proceeds of the sale of such property, shall also include such commanding officer.



· APPENDICES.

FIRST APPENDIX.

This Appendix consists of Enrolment Forms and is not reproduced. A list of forms is given below with the number and year of the Gazette of India, Army Department, Notification in which each form was prescribed. The forms that appeared in Army Department Notification 911 of 1911 formed the original First Appendix.

Form No.	To whom applicable	Army Department Notification	REMARKS
I. (I. A. F. E-1162)	Combatants . . .	No 830 of 1926	
III. (I. A. F. E-1164).	Non-Combatants Indian Army Service Corps	No 71 of 1927.	
IV. (I. A. F. Medical-25).	Non-Combatants Indian Hospital Corps	No 563 of 1926	
V. (I. A. F. E-1166).	Non-Combatants for whom no special form of enrolment has been prescribed	No 1385 of 1925 as amended by No 1188 of 1928	

SECOND APPENDIX.

FORMS OF CHARGES.

PART I.

Commencement of Charge Sheet.

The accused [number, rank, name, corps] or

The accused [name] being a person subject to Indian Military Law [as an officer, as a warrant officer, as a non-commissioned officer] under the provisions of section 2 (1) (c) [and section 3 (1)] of the Indian Army Act

is charged with—

PART II.

Statement of offence.

OFFENCES IN RESPECT OF MILITARY SERVICE.

SECTION 25.

- (a) Shamefully { abandoning a } { garrison } { committed to his charge, }
 { delivering up a } { post } { which it was his duty to defend }
 { guard }
- (b) In presence of an enemy { abstainfully casting away his } { arms }
 { intentionally } { words } { ammunition }
 { using } { (other means) } { to induce a person subject to }
 { misbehaving in such manner as to show cowardice } { military law to abstain } { from acting against the enemy }
 { subject to military law }
- (c) (1) { Holding correspondence with } { the enemy. }
 { Communicating intelligence to } { a person in arms against the State }
- (2) Coming to the knowledge of a { correspondence with } { the enemy }
 { communication of } { a person in arms }
 { intelligence to } { against the State }
- (d) Treacherously making known the watchword to a person not entitled to receive it
- (e) (1) { Arresting } { money } { an enemy }
 { Relieving } { victuals } { a person in arms against the }
 { ammunition } { State. }
- (2) Knowingly { harbouring } { an enemy }
 { protecting } { a person in arms against the State. }

SECTION 26.

- (a) { striking }
 { forcing } a sentry.
 { attempting to force }
- (b) In time of peace, intentionally occasioning a false alarm in { camp.
 { garrison.
 { cantonment.
- (c) { When a sentry; }
 { When on guard } { plundering }
 { wilfully destroying } property placed under { his charge.
 { wilfully injuring } charge of his guard.
- (d) When a sentry in time of peace, { sleeping upon his post,
 { quitting his post } { without being regularly relieved.
 { without leave }

MUTINY AND INSUBORDINATION.

SECTION 27.

- (a) { Beginning
 { Exciting
 { Causing
 { Conspiring with } another person } to cause } a mutiny
 { joining in } other persons }
- (b) Being present at a mutiny and not using his utmost endeavours to suppress the same
- (c) { Knowing
 { Having reason to believe in } the existence of { a mutiny
 { a conspiracy against the State, } and failing to give information thereof without delay
 { to his commanding or other superior officer, }
- (d) { Using
 { Attempting to use } criminal force in } his superior officer { knowing
 { Committing an assault on } having reason to believe } him to be such.
 { Disobeying the lawful command of his superior officer }
- (e)

SECTION 28

- (a) Being grossly { insolvent } to his superior officer in the execution of his office
- (b) Refusing to { superintend } the making of a { field work } { other military } { ordered to be made } { in quarters } { in the field }
- (c) (1) Impeding { a provost-marshal } { an assistant provost-marshal } { a non-commissioned officer } { legally exercising authority } { under } { on behalf of } { a provost-marshal }
- (2) Refusing when { a provost-marshal } { called on to } { an assistant provost-marshal } { assist in the } { execution of } { a non-commissioned officer } { legally exercising authority } { under } { on behalf of } { a provost-marshal }

SECTION 29

- (1) Deceiving the service
- (2) Attempting to desert the service.

SECTION 30.

- (a) (1) Knowingly harbouring a deserter
- (2) { Knowing } { having reason to believe } { that } { a person has deserted } { a deserter has been harboured by } { another person, } { failing to give information thereof without delay to his own or some other superior officer, } { failing to use his utmost endeavours to cause such deserter to be apprehended. }
- (b) { Knowing } { having reason to believe } { a person to be a } { deserter and } { attempting to procure } { the enrolment of such person. }
- (c) Without having first obtained a { corps } { department } { enrolling himself in } { the same } { another } { department. }

SECTION 20—*contd.*

- (d) Absenting himself without leave
- (e) Without sufficient cause overstaying leave granted to him
- (f) Having received information from proper authority that the { corps } to which he belongs has been ordered on active service and failing without sufficient cause to rejoice from leave without delay { department }
- (g) Without sufficient cause failing to appear at { parade } appointed for { exercise } the time fixed at the { place } { duty }
- (h) Quitting { parade } without sufficient cause
- (i) In time of peace quitting his { guard, } without being regularly relieved { platoon, } without leave { patrol, }
- (j) Being found, without proper authority, two miles or upwards from camp
- (k) Absenting himself without proper authority from his { (entrenchments) } after tattoo { lines } { camp after retreat beating. }

DISGRACEFUL CONDUCT.

SECTION 21.

- (a) Dishonestly { misappropriating } { money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments, } { the property of Government, entrusted to him, } { converting to his own use } { military stores, }

(6) Dishon-
estly { retaining
money, provisions,
forage,
arms,
clothing,
ammunition,
tools,
instruments,
equipments, &
military stores }

the property
of Govern-
ment { knowing
having reason
to believe }

the same to
have been
dishonestly
misappropriated
converted to his
own use { by a
person
to whom
it was
entrusted. }

(7) Wilfully { destroying } Government property entrusted to him.
{ injuring }

(8) Committing theft in respect of the pro-
perty of { Government
a military
a person { miss
band
institution,
subject to military law
serving with { the army }

(9) Falsely { receiving
retaining { knowing
having reason
to believe } { Government
a military
a person { mis-
band
institution,
subject to military law
serving with { the army }

(10) Such an offence as is mentioned
in clause (1) of section thirty-
one of the Indian Army Act { with intent to
defraud
cause wrongful gain to a person
cause wrongful loss to a person }

(11) Malingering.
(12) { Poisoning
evincing { disease,
infirmity, } in himself }

OFFENCES IN RELATION TO PROPERTY.

SECTION IV.

(a) (1) Committing extortion.

(2) Extorting without proper authority {carriage
passage
provisions} from a person.

(b) In time of peace, {committing house-breaking for the purpose of plundering
plundering } a field,
destroying } a garden,
damaging } (other property)

(c) Unlawfully {killing
injuring
making away with } his horse,
ill treating } an animal used in the public service,
losing

(d) { Making away with
being concerned in making } his
away with } arms,
ammunition,
equipment,
instruments,
tools,
clothing
regimental necessaries

(e) Losing by neglect his {arms
ammunition,
equipment,
instruments,
tools,
clothing,
regimental necessaries.

SECTION 35—contd.

- (f) Willfully injuring
- | | |
|---|---|
| { his
{ arms,
ammunition
equipments,
instruments,
tools,
clothing,
regimental necessaries. } | { Government,
{ a military
{ band,
{ institution,
{ subject to military law
{ acting with } the army.
{ attached to } } |
| | |

- (g) { Selling,
 { passing
 { destroying
 { defacing
- | | |
|-------------------------------------|---------------------------|
| { a medal
{ a decoration } | { granted to him. } |
| | |

OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS.

SECTION 36

- (a) Making a false accusation against a person subject to military law knowing such accusation to be false
 (b) In making a complaint under section 117 of the Indian Army Act { knowingly making a false statement affecting the character of person subject to military law
 { knowingly and wilfully suppressing a material fact

- (c) { Obtaining
 { Attempting
 { to obtain } for him-
 { self
 { for a person
- | | | | |
|---|---|---|--|
| { a pension
{ an allowance
{ a grace
{ a privilege } | { by a false statement which he
{ by
{ making } a false entry in a
{ book
{ by making a document containing a false statement
{ true entry
{ by omitting to make a
{ document containing a true statement. } | | |
| | | { knew
{ believed } to be false
{ did not believe to be true. } | |
| | | | |
| | | | |

SECTION 38—*contd.*

(2) { Using a { menacing { word {
 { disrespectful { sign {
 { violent { gesture { } in the presence of a court-martial whilst sitting.

(3) Having been duly { sworn { before { a court-martial { making a { knew {
 { affirmed { to administer an oath or { false state- { to be false
 { affirmation { ment which { believed {
 { he { did not believe to be true.

MISCELLANEOUS MILITARY OFFENCES.

SECTION 39.

(4) Behaving in a manner unbecoming the position and character of { an officer.
 { a warrant officer.

(5) { Striking { a person subject to the Indian Army Act being his sub- { rank {
 { ill-treating { ordinate in { position.

(6) When in command { at a post, { receiving a complaint { beaten { a person, { and failing to have due reparation made to
 { on the march { that a person under { maltreated { a fair, { the injured person or to report the case to
 { his command has { disturbed { a fair, { a riot, { the proper authority.
 { committed { a trespass.

- (d) By defiling a place of worship.
[otherwise] } intentionally; { insulting the religion of a person wounding the religious feelings } of a person
- (e) Attempting to commit suicide and doing an Act towards the commission of the same.
- (f) Trying below the rank of warrant officer and carrying when off duty a sword without proper authority { in about going to, returning from } { camp, cantonments, a town, a bazar, a town, a bazar. } the enrolment of a person.
- (g) { Accepting Obtaining for himself or for any other person } { a gratification as a motive } { for reward } { for a person in the service. } { leaving absence promotion an advantage an indulgence }
- (h) Neglecting to obey { general garrison [other] } orders.
- (i) { An act } { prejudicial to good order and military discipline. }
- (j) { An omission } { to... (specific offence) attempted } { and doing an act towards the commission of the same. }

ATTEMPTS NOT BEFORE PROVIDED FOR.

SECTION 30-A.

ABETMENT.

SECTION 40.

Abetment within the meaning of the Indian Penal Code of an offence punishable under the Indian Army Act.

CIVIL OFFENCES.

SECTION 41.

In a place beyond } British India } Consulting a civil offence, that is to say, (state the offence as described in the Indian Penal Code
which on active service in } or other law in force in British India).

SECTION 42.

(1) { Committing } an offence punishable under Chapter VI of the Indian Penal Code, that is to say (state the offence
Attempting to commit } described in the Code
Abetting the commission of }

(2) { Committing } { murder }
Attempting to commit } culpable homicide } against a person subject to military law.
Abetting the commission of }

(3) { Voluntarily causing }
Attempting to voluntarily cause } hurt. }
Abetting the voluntarily causing of } grievous hurt } against a person subject to military law.

Charges for other offences referred to in section 42 will be similarly framed, the offence being stated as described in the Indian Penal Code (sections 324, 325 to 335, or 306) and the words "against a person subject to military law" added.

ILLUSTRATION OF CHARGE.

NOTE.—The following is an illustration of a complete charge-sheet, with statement of offence and particulars, as it would be placed before a district court-martial:—

Charge-Sheet.

The accused No. 240, Sepoy Ali Baksh, —th Punjabis is charged with—

Disobeying the lawful command of his superior officer

First charge.
Sec. 27(e).

in that he

at Allahabad, on the 28th January 1911, disobeyed the lawful command of his superior officer, Jemadar Futteh Khan of the same regiment, to turn out for Commanding Officer's parade, by not turning out.

Being grossly insubordinate to his superior officer in the execution of his office,

Second charge.
Sec. 28(a).

in that he

at Allahabad, on the 28th January 1911, when confined by Jemadar Futteh Khan of the same regiment, on the first charge, said to him "I am a better man than you and will not go to the guard-room by your order", or words to that effect.

A B.,

Commanding —th Punjabis.

Allahabad,

31st January 1911

* To be tried by a district court-martial

X. Y.,

Commanding Allahabad Brigade
(or Staff Officer, who should sign
for Officer Commanding
Allahabad Brigade).

Allahabad.

1st February 1911.

* When the sanction is accorded for the trial of grave offences by summary court-martial (I. A. A. section 74, proviso) a similar entry should be made on the charge-sheet.

NOTE AS TO USE OF FORMS OF CHARGES.

This note does not form part of the Appendices to the Indian Army Rules

(1) Every charge-sheet will begin as shown in the form in Part I of the Second Appendix (forms of charges), which are given as examples.

The description of an officer, warrant officer or person enrolled under the Act by his rank and corps is a sufficient averment that he is an officer, warrant officer or such a person and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 13.)

(2) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts; a statement of the offence and a statement of the particulars. [Rule 20 (B)]

(4) The statement of the offence will be in one of the forms in Part II.

(5) Where two or more words or expressions occur in Part II, of the Second Appendix bracketed together one under the other, the particular word, or expression, should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6) Where the officer framing the charge is doubtful whether the offence is capable of being proved by one word, or expression, or by native charges, each charge which appear to the officer to

(7) Where two or more of the words or expressions bracketed together appear, when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. [See Rule 20 (A).]

(8) For example, a person may be charged with dishonestly misappropriating money, provisions, and forage, the property of Government entrusted to his charge; but a charge for dishonestly misappropriating money, provisions or forage will be a bad charge.

(9) In a few cases shown in italics bracketed thus [] words may be inserted in the charge which are not in the Act. In these cases, the Act contains a general expression such as "other place," "other property," "or otherwise," and the officer framing the charge must omit these words and insert a description of the place, property or means.

(10) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," etc., or "in having," etc., and stating in brief ordinary language what the accused is alleged to have done.

(11) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(12) In the case of several charges, the particulars in one charge may refer to the particulars in another [Rule 20 (E)], as, for example, "in having done the acts alleged in the particulars to the first charge," or "in that, at the place and time aforesaid, he was deficient in the necessities abovementioned in the second charge, which it was his duty to have." If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(13) The statement of particulars should specify all the ingredients necessary to constitute the offence; for example, if the charge is one for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command.

(14) The "particulars" should always give a general description of the place where the offence was committed, as "at the town," or "the line of march," or "in the field," or "in the camp," or "in the barracks," or "in the place known," or "in the place used," or "in the place not exactly known," or "in the place of the essence of the offence."

(15) The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, in the case of absence without leave, or being asleep on a post.

some cases the offence may be stated with the most accuracy as been committed between two days or between two times; as, for ace, in the case of absence without leave, or of quitting a post; other cases "between" may be used in consequence of the exact day or exact time not being known.

(17) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(18) In many cases, as, for instance, where the defence is an *alibi*, the time and place may be of the utmost importance in proving that *alibi*, although it is not the essence of the offence.

(19) There must be added at the end of the "particulars" a statement of any expenses, loss or damage in respect of which the court-martial will be asked to award compensation under section 43 (A) of the Act. For example, there may be added to the "particulars" in the case of a charge under section 35 (b) that the accused thereby damaged property to the value of ; and other statements may be made, according to the facts

(20) If, however, the expenses, loss or damage were caused by an act or omission which constitutes another offence, separately specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only

NOTE AS TO USE OF FORMS OF CHARGES.

This note does not form part of the Appendices to the Indian Army Rules.

(1) Every charge-sheet will begin as shown in the form in Part I of the Second Appendix (forms of charges), which are given as examples.

The description of an officer, warrant officer or person enrolled under the Act by his rank and corps is a sufficient averment that he is an officer, warrant officer or such a person and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 19.)

(2) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts; a statement of the offence and a statement of the particulars. (Rule 20 (B).)

(4) The statement of the offence will be in one of the forms in Part II.

(5) Where two or more words or expressions occur in Part II, of the Second Appendix bracketed together one under the other, the particular word, or expression, should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6) Where the officer framing the charge is doubtful whether the offence is capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7) Where two or more of the words or expressions bracketed together appear, when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. [See Rule 20 (A).]

(8) For example, a person may be charged with dishonestly misappropriating money, provisions, and forage, the property of Government entrusted to his charge; but a charge for dishonestly misappropriating money, provisions or forage will be a bad charge.

(9) In a few cases shown in italics bracketed thus { . . . } words may be inserted in the charge which are not in the Act. In these cases, the Act contains a general expression such as "other place," "other property," "or otherwise," and the officer framing the charge must omit these words and insert a description of the place, property or means.

(10) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," etc., or "in having," etc., and stating in brief ordinary language what the accused is alleged to have done.

(11) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(12) In the case of several charges, the particulars in one charge may refer to the particulars in another [Rule 20 (E)], as, for example, "in having done the acts alleged in the particulars to the first charge," or "in that, at the place and time aforesaid, he was deficient in the necessaries abovementioned in the second charge, which it was his duty to have." If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(13) The statement of particulars should specify all the ingredients necessary to constitute the offence; for example, if the charge is one for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command.

(14) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town, or "the line of march," and if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(15) The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, in the case of absence without leave, or being absent on a post.

some cases the offences may be stated with the most accuracy as been committed between two days or between two times; as, for example, in the case of absence without leave, or of quitting a post, other cases "between" may be used in consequence of the exact day or exact time not being known.

(17) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(18) In many cases, as, for instance, where the defence is an alibi, the time and place may be of the utmost importance in proving that alibi, although it is not the essence of the offence.

(19) There must be added at the end of the "particulars" a statement of any expenses, loss or damage in respect of which the court martial will be asked to award compensation under section 43 (A) of the Act. For example, there may be added to the "particulars" to the case of a charge under section 35 (b) that the accused thereby damaged property to the value of . . . and other statements may be made, according to the facts.

(20) If, however, the expenses, loss or damage were caused by an act or omission which constitutes another offence, separately specified in the Act, that act or omission should be charged as a separate offence, for example, if a man deserts and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

NOTE AS TO USE OF FORMS OF CHARGES.

This note does not form part of the Appendices to the Indian Army Rules

(1) Every charge sheet will begin as shown in the form in Part I of the Second Appendix (forms of charges), which are given as examples.

The description of an officer, warrant officer or person and Act by his rank and corps is a sufficient averment that warrant officer or such a person and that he is amenable. In other cases, words must be added to show that the person is amenable to military law (See Rule 19)

(2) The commencement of the charge-sheet (according to Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts; a statement of the offence and a statement of the particulars (Rule 20 (B)).

(4) The statement of the offence will be in one sentence.

(5) Where two or more words or expressions are used in the Second Appendix bracketed together one word or expression, should be used which offence which appears to the officer framing the charge is proved by legal evidence.

(6) Where the officer framing the charge is not capable of being proved by legal evidence one word, or expression, or by another native charges, each charge contains words which appear to the officer to be applicable.

(7) Where two or more of the words appear, when coupled together with the offence, the charge may contain them but in no case must the charge be framed in such a way as to imply that the words or expressions are

(8) For example, a person privy to money, provisions, or other articles, or to his charge; but a person privy to provisions or forage will be charged with—

(9) In a few cases where the Act contains a general "or otherwise," and insert a description of the offence.

(10) The statement of the offence should be framed so that the accused is charged with—

(11) The words "the accused" should be used in the sentence in the charge.

(12) In referring to the accused in the charge, the words "the accused" should be used.

If the accused is a Sepoy, the words "Sepoy" should be used.

No. 4.

CHARGE-SHEET.

The accused, No. 4, Sepoy,

Regiment, is charged with—

of alarm quitting his post without being regularly relieved.

The accused, No. 5, Sepoy,

after having been posted as sentry

Guard at 6 P.M., when Sepoy, the sentry, ran amok at 7 P.M. the same evening and was firing in all directions, quitting his post without being regularly relieved.

No. 5

CHARGE-SHEET

The accused, No. 5, Sepoy,

Regiment, is charged with—

When a sentry over a magazine sleeping upon his post,

in that he, at Post of the

between 1 and 2 A.M. when sentry Magazine Guard, was asleep

No. 6

CHARGE-SHEET

The accused, No. 6, Sepoy,

Regiment, is charged with—

In time of war quitting his picket without leave,

in that he, at Field Force, on 6 P.M., when on outlying picket No. 1, without leave.

show
re of
of
arded
bring
shamefully

1. The accused is
2. The accused is
3. The accused is
4. The accused is

5. The accused is

6. The accused is

7. The accused is
8. The accused is
9. The accused is
10. The accused is

No. 1

11. The accused is

12. The accused is

13. When a entry in time of 1000, a
in that he, at
on No. 1000, at
14. The accused is

OF CHARGES.

No 1

CHARGE-SHEET

The accused, No 1, Sepoy, 1st Regiment, is charged with—

in time of war shamefully casting away his arms, when on outlying picquet and shamefully cast away his rifle left his picquet,

No 2

CHARGE-SHEET

The accused, No 2, Sepoy, 1st Regiment, is charged with—

in time of war an enemy misbehaving in such manner as to show in that he, at on, when one of the Barrack Guard sentry who had mortally wounded the Barrack Guard sentry and seriously wounded another and was firing in all directions, by abandoning his guard and shamefuly fleeing and hiding himself

No 3

CHARGE-SHEET

The accused, No 3, Sepoy, 1st Regiment, is charged with—
in time of war intentionally occasioning a false alarm in camp, in that he at Camp Field Force, on, by discharging his rifle, intentionally caused a false alarm in the said camp

No. 4

CHARGE-SHEET.

The accused, No 4, Sepoy, 1st Regiment, is charged with—
When a sentry in time of alarm quitting his post without being regularly relieved, in that he, at on after having been posted as sentry on No 1 Post Guard at 6 P.M., when Sepoy the Barrack Guard sentry, ran amok at 7 P.M. the same evening and was firing his rifle in all directions, quitted his post without being regularly relieved

No 5

CHARGE-SHEET

The accused, No 5, Sepoy, 1st Regiment, is charged with—
When a sentry over a magazine sleeping upon his post, in that he, at on between 1 and 2 A.M. when sentry on No 1 Post of the Magazine Guard, was asleep.

No 6.

CHARGE-SHEET.

The accused, No 6, Sepoy, 1st Regiment, is charged with—
in time of war quitting his picquet without leave, in that he, at Field Force, on, between 5 and 6 P.M. when on outlying picquet No 1, quitted the said picquet without leave.

ARMY ACT RULE

No. 14

(Joint trial.)

CHARGE-SHEET.

Sec. 27 (a). The accused persons No. Havildar; Regiment, No. Sepoy, Regiment, (to be), are charged with—

Joining in a mutiny,

in that they together, at number of other sepoys of the Company, in company with a orderly room of the said regiment with representation on a matter of supposed and then and there, they, with the seeing the said Havildar marched out subordnately took off their belts and

No. 15.

(Joint trial.)

CHARGE-SHEET

Sec. 27 (a). The accused persons No. Naick No Sepoy (Lance- Naick) and No Sepoy, all of the Regiment, are charged with—

Conspiring with other persons to cause a mutiny in that they at on egred together and with Sepoy Regiment (and certain other persons unknown) to cause a mutiny in Company Regiment to wit, to cause the said Company to refuse to march on the to which place the said Company was under orders to march.

No 16

CHARGE-SHEET

Sec. 27 (c). The accused, No. Sepoy, Regiment, is charged with—

Knowing the existence of an intention to mutiny and failing to give information thereof without delay to his commanding or other superior officer, in that he, at on, was present when Naick Driver and other soldiers of the Mountain Battery were assembled, and, in his hearing, agree to cut up and destroy the harness belonging to the said battery and failed to give information, thereof to his commanding or other superior officer

No 17

CHARGE-SHEET.

Sec. 27 (d). The accused, No. Sepoy, Regiment, is charged with—

Using criminal force to his superior officer knowing him to be such, in that he, at on, struck with his fist on the head Havildar of the same regiment.

No 18

CHARGE-SHEET.

Sec. 27 (d). The accused, No. Sepoy, Regiment, is charged with— Attempting to use criminal force to his superior officer knowing him to be such,

in that he, at on, threw a stone at Havildar of the same regiment which missed the said Havildar.

No 19

CHARGE-SHEET.

Sec. 27 (d). The accused, No. Sepoy, Regiment, is charged with— Committing an assault on his superior officer having reason to believe him to be such,

in that he, at on, threatened to leave the lines of the a stone and threatened to throw it at the said if he believe was his superior officer.

No. 20.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 27 (c).
Disobeying the lawful command of his superior officer,
 in that he, at , oo , when ordered by Nalck
 of the same regiment to fall in for fatigue, did not do so.

No. 21.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 23 (a).
Being grossly insubordinate to his superior officer in the execution of his
office,
 in that he, at ; oo , said to Havildar of the
 same regiment, who had ordered him to be confined, "I am as good a
 man as you and will fight you any day you like," or words to that effect.

No. 22.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 23 (b).
Refusing to assist in the making of a field work ordered to be made in
quarters,
 in that he, at , on , when undergoing a course of
 double company training, refused to assist in the making of an entrench-
 ment, saying "I enlisted to fight and not to dig," or words to that effect.

No. 23.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 23 (c).
Refusing, when called on, to assist in the execution of his duty as provost-
marshal,
 in that he, at , oo , when called on by Captain
 Provost-Marshal of the Brigade, Field Force, to assist
 him in arresting an offender, refused to do so.

No. 24.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— First charge.
Deserting the service, Sec. 29.
 in that he, at , on , absented himself from the
 Regiment, until apprehended by the Frontier Constabulary , at
 , on
Committing theft in respect of the property of Government,
 in that he, when absenting himself from his regiment at the place and Second charge.
 day aforesaid, committed theft by dishonestly taking with him one rifle Sec. 31 (d).
 value and twenty rounds of ball ammunition value , the
 property of Government.

Note 1—Occasionally proof of the circumstances of the apprehension of the accused is necessary to enable the court to decide whether the absence of the accused amounted to desertion or was merely absence without leave. Generally, however, those circumstances are not material facts and often proof of them is not, without inconvenience to the public service and great delay, available. In such cases they need not be proved. Unless therefore the prosecution proposes to prove the date, or date and circumstances, of the apprehension those facts should not be mentioned in the charge.

Note 2—It is immaterial whether the rifle is the soldier's own or a comrade's. See Indian Penal Code, section 27 and illustration (d) to section 378.

No. 25.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— First charge.
Deserting the service, Sec. 29.
 in that he, at , on , absented himself from the
 Regiment, until apprehended by the civil power at , on
Losing by neglect his clothing and regimental necessaries,
 in that he, at , on , was deficient of one great coat Sec.
 (value), one pair of khaki uniform (value), and one dhoti .

(value)

Note.—See note 1 to charge sheet No 24

No. 25

CHARGE-SHEET

Sec. 23. The accused, No. , Sepoy, Regiment, is charged with—
Deserting the service,
 in that he, at on deserted from the Regiment.
 Note.—This form is sufficient for most of the ordinary cases of desertion.

No. 26.

CHARGE-SHEET

Sec. 23. The accused, No. , Sepoy, Regiment, is charged with—
Deserting the service,
 in that he, at on when under orders for embarkation
 for foreign service absented himself from to with intent to avoid
 such embarkation.

No. 28

CHARGE-SHEET

Sec. 23. The accused, No. , Sepoy, Regiment, is charged with—
Deserting the service,
 in that he, at oo having been placed under orders for
 active service and having been granted leave of absence from to
 of the said leave but absented himself with intent to avoid such active
 service.

Note.—It will often be advisable to frame an alternative charge for
 "without sufficient cause overstaying leave granted to him" see charge
 sheet No 34 With respect to a case in which the accused has been
 apprehended by the civil police see note 1 to Charge-Sheet No 24

No. 29

CHARGE-SHEET

Sec. 23. The accused, No. , Sepoy, Regiment, is charged with—
Attempting to desert the service,
 in that he, at on attempted to desert the service by
 attempting to quit the lines of the Regiment, disguised as a woman,
 with the intention of deserting from the said regiment.

No. 30.

CHARGE-SHEET

Sec. 30 (a). The accused, No. , Sepoy, Regiment, is charged with—
Knowingly harbouring a deserter,
 in that he, at on concealed in his house Sepoy,
 Regiment, whom he knew to be a deserter from the said regiment.

No. 31.

CHARGE-SHEET.

Sec. 30 (b). The accused, No. , Sepoy, Regiment, is charged with—
Knowing a person to be a deserter and attempting to procure the enrolment of such person,
 in that he, at on when employed on recruiting
 duty, brought before Major A B, an Enrolling Officer, one C. D. whom he
 knew to be a deserter from the Regiment and
 attempted to procure the enrolment of the said C. D. into the
 Regiment.

No. 32.

CHARGE-SHEET.

Sec. 30 (c). The accused, No. , Sepoy, Regiment, is charged with—
Without having first obtained a regular discharge from his corps enrolling himself in another corps,
 in that he, at on without having first obtained
 a regular discharge from the Regiment, enrolled himself in
 the Regiment.

No 33.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (d)
Absenting himself without leave,
 in that he, at , absented himself from tattoo roll call on till
 7-30 A M on

No 34

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (d).
Without sufficient cause overstaying leave granted to him,
 in that he, having been granted leave of absence from to to
 proceed to , failed, without sufficient cause, to rejoin at on
 the expiry of the said leave.

No 35.

CHARGE-SHEET

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (e).
*Having received information from proper authority that the corps to which
 he belongs has been ordered on active service and failing without
 sufficient cause to rejoin from leave without delay,*
 in that he, on , while on leave of absence at , having
 received information from that the Regi-
 ment had been ordered on active service, failed, without sufficient cause,
 to rejoin the said regiment

No 36

CHARGE-SHEET

The accused, No. , Sepoy, Regiment, is charged with— Sec 30 (f)
*Without sufficient cause failing to appear, at the time fixed, at the place
 appointed for duty.*
 in that he, at , on , failed without sufficient cause to
 appear at A M. at , the place appointed for Command-
 ing Officer's parade

No 37

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (g).
Quitting the line of march without leave from his superior officer,
 in that he, at , on , when on the line of march from
 to , fell out without leave from the officer commanding
 his company

No 38

CHARGE-SHEET

The accused, No. , Sepoy, Regiment, is charged with— Sec 30 (h).
In time of peace, quitting his guard without leave,
 in that he, at , on , when on regimental quarter-
 guard duty, quitted the said guard without leave.

No 39.

CHARGE-SHEET

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (i).
Being found without proper authority two miles or upwards from camp,
 in that he, when his Regiment was encamped at , on
 was found at without proper authority for being at the said
 place

No 40.

CHARGE-SHEET

The accused, No. , Sepoy, Regiment, is charged with— Sec. 30 (j).
Absenting himself without proper authority from his lines after tattoo,
 in that he, at , ou , absented himself without proper
 authority from his lines from P M. to P M.

No. 41

CHARGE-SHEET.

Sec. 31 (a). The accused, No. , Naick, Indian Army Service-Corps, is charged with—
Dishonestly misappropriating money, the property of Government, entrusted to him,
 in that he, when on the march from to between the and dishonestly misappropriated Rupees out of a sum of Rupees, the property of Government, entrusted to him for the daily purchase of bhooas for feeding camels in his charge.

No. 42

CHARGE-SHEET.

Sec. 31 (a). The accused, No. , 1st class Sub-Assistant Surgeon, Indian Medical Department, is charged with—
Dishonestly misappropriating military stores, the property of Government, entrusted to him,
 in that he, at between and dishonestly misappropriated the undermentioned military stores, the property of Government, of which he was in charge as Sub-Assistant Surgeon in Sub-Medical charge of No Field Ambulance, viz:—
 , value
 , value
 , value

No. 43.

CHARGE-SHEET.

First charge. The accused, No. , Havildar, Regiment, is charged with—
 Sec. 31 (a). *Dishonestly misappropriating ammunition, the property of Government, entrusted to him,*
 in that he, at on dishonestly misappropriated twenty rounds of ball ammunition, the property of Government, value which had been entrusted to his charge for the target practice of the casuels of Company, Regiment.
 Second charge. *An act prejudicial to good order and military discipline,*
 Sec. 59 (1). in that he, at on through neglect lost twenty rounds of ball ammunition, the property of Government, value (Alternative) had been entrusted to him for the target practice of the casuels of which Company, Regiment

No. 44.

CHARGE-SHEET.

Sec. 31 (b). The accused, Jemadar, Regiment, is charged with—
Dishonestly receiving military stores, the property of Government, knowing the same to have been dishonestly misappropriated by a person to whom they were entrusted,
 in that he, at on dishonestly received from company Quartermaster-Havildar and applied to his own use, six pieces of flannelette value the property of Government, which he knew to have been dishonestly misappropriated by the said company Quartermaster-Havildar to whom they were entrusted.

No. 45

CHARGE-SHEET.

Sec. 31 (c). The accused, No. , Sepoy, Regiment, is charged with—
Willfully destroying Government property entrusted to him,
 in that he, at on willfully destroyed by breaking it up one heliograph, value the property of Government, which had been entrusted to him for his use as a regimental signaller.

No. 46

CHARGE-SHEET.

First charge. The accused, No. , Sepoy, Regiment, is charged with—
 Sec. 31 (d). *Committing theft in respect of the property of a person subject to military law,*

in that he, at , on , committed theft in respect of a watch the property of sepoy in the same Regiment.
Dishonestly receiving, knowing it to be stolen, the property of a person subject to military law, Second charge: Sec. 31 (c). (Alternative.)
 in that he at the place and on the day aforesaid was in possession of a watch stolen from the said which he knew to have been stolen.

No 47.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 31 (d).
Committing theft in respect of the property of Government,
 in that he, at , on , committed theft in respect of one M. L. E. Rifle, value , the property of Government.

No 48.

CHARGE-SHEET

The accused, No. , Sepoy, Regiment, is charged with— First charge, Sec. 31 (e).
Dishonestly retaining knowing it to be stolen the property of Government,
 in that he, at , on , was in unlawful possession of twenty fired rifle cartridge-cases, the property of Government, which he knew to have been stolen.
An act prejudicial to good order and military discipline, Second charge, Sec. 39 (i). (Alternative.)
 in that he, at , on , was in unauthorised possession of twenty fired rifle cartridge-cases, the property of Government.

No 49

CHARGE-SHEET

The accused Bessaldar, Regiment, is charged with— Sec. 31 (f).
Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud,
 in that he at , on or about the , when commanding L. A. Squadron Regiment, with intent to defraud, caused the sum of to be transferred from the half squadron grain account to his own private account with the half squadron bants (name).

No 50

CHARGE-SHEET

The accused, No. Havildar, Regiment, is charged with— Sec. 31 (f).
Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to defraud,
 in that he, at , on , having received from Lieutenant A. B. Regiment a cheque for Rupees payable to the Mess President, Regiment, irregularly cashed the same at the Regimental Treasury Chest, Regiment and fraudulently misappropriated the proceeds, namely, Rupees .

No 51.

CHARGE-SHEET

The accused, No. Havildar, Regiment, is charged with— Sec. 31 (f).
Such an offence as is mentioned in clause (f) of section thirty-one of the Indian Army Act, with intent to cause wrongful loss to a person,
 in that he, at , on , with intent to cause wrongful loss to Sepoy debited the said Sepoy in the acquaintance roll of Company, Regiment, with a deduction of Rupees on account of clothing which deduction he did not credit to the said sepoy's clothing account.

No 52.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 31 (g).
Malingering,
 in that he, at , on , (between and) with the intention of evading his duties as a soldier counterfeited dumbness.

No. 53.

CHARGE-SHEET.

Sec. 31 (g). The accused, No. , Sepoy, Regiment, is charged with—
Feigning disease in himself,
 in that he, at , on , pretended to Captain
 Indian Medical Service, that he was suffering violent pains in the head
 and down his back, whereas he was not so suffering

No. 54

CHARGE SHEET

Sec. 31 (g). The accused, No. , Sepoy, Regiment, is charged with—
Intentionally delaying his cure,
 in that he, at , on , when under medical treatment for
 a wound in his leg, removed the bandages from the said wound with
 intent, thereby to delay his cure and did thereby delay his cure.

No. 55

CHARGE SHEET

Sec. 31 (A). The accused, No. , Sepoy, Regiment, is charged with—
Voluntarily causing hurt to a person with intent to render that person
unfit for service,
 in that he, at , on , at the request of Sepoy
 cut off the trigger finger of the said sepoy with intent to render him
 unfit for service

No. 56

CHARGE SHEET.

First charge.
 Sec. 31 (4). The accused, No. , Sepoy, Regiment, is charged with—
Committing an offence of an unnatural kind,
 in that he, at , on , committed an unnatural offence
 on the person of , a sepoy in the same regiment
 Second charge:
 Sec 31 (1)
 (Alternative) *attempting to commit an offence of an unnatural kind and doing an act*
towards its commission,
 in that he, at , on , attempted to commit an unnatural
 offence on the person of , a sepoy in the same regiment, and did
 an act towards its commission, that is to say (describe the act)

No. 57.

CHARGE-SHEET

Sec. 32. The accused, No. , Sepoy, Regiment, is charged with—
Intoxication,
 in that he, at , on , [when on duty (specify duty) or
 having been previously warned for duty (specify duty)] was intoxicated

No. 58.

CHARGE SHEET.

Sec. 33. The accused, No. , Sepoy, Regiment, is charged with—
Negligently suffering to escape a person taken in arms against the State,
placed under his charge,
 in that he, at , on , when posted as a sentry over
 A , a person taken in arms against the State,
 negligently suffered the said A B to escape.

No. 59

CHARGE SHEET.

Sec. 34 (1). The accused, No. Havildar, Regiment, is charged with—
When in command of a guard refusing to receive a person duly committed
to his charge,
 in that he, at , on , when in command of the quarter
 guard of the Regiment, refused to receive Sepoy , who
 had been ordered into confinement by Jemadar and duly com-
 mitted to his charge.

No. 60.

CHARGE-SHEET.

The accused, No. , Havildar, Regiment, is charged with— Sec. 34 (b).
Releasing without proper authority a person placed under his charge,
 in that he at , on , when in command of the quarter
 guard of the Regiment, without authority released Sepoy ,
 who was confined in the said quarter guard

No. 61.

CHARGE-SHEET.

The accused, Subadar, Regiment, is charged with— Sec. 34 (c)
When in military custody leaving such custody before being set at liberty
by proper authority,
 in that he, at , on , when under close arrest in his
 quarters went to the Bazaar

No. 62.

CHARGE-SHEET.

The accused, No. , Naick, Regiment, is charged with— Sec. 35 (a).
Committing extortion,
 in that he at , on , by threatening to make a false
 report to the officer commanding their company to the effect that Sepoys
 and had committed an unnatural offence together,
 extorted Rupees from each of the said Sepoys.

No. 63

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 35 (b).
In time of peace committing house-breaking for the purpose of plundering,
 in that he at , on , broke into the house of
 for the purpose of plundering.

No. 64

CHARGE-SHEET.

The accused, No. , Driver, Mule Corps, is charged with— Sec. 35 (c).
Designedly ill treating an animal used in the public service,
 in that he, at , between the and , designedly
 ill treated Mule No by placing a stone under its saddle,
 thereby causing a sore back.

No. 65.

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 35 (d).
Making away with his clothing,
 in that he, at , on , sold his great coat (value)
 to for three rupees

No. 66

CHARGE-SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 35 (e).
Losing by neglect his clothing and regimental necessaries,
 in that he, at , on , was deficient of one khaki blouse
 (value) one button brush (value), and one dhurrie (value).

No. 67

CHARGE-SHEET.

The accused No. , Sepoy, Regiment, is charged with— Sec. 35 (a).
Making a false accusation against persons subject to military law knowing
such accusation to be false,
 in that he, at , on , when appearing before Colonel
 A , commanding the Regiment, to answer for
 an offence, used language to the following effect, that is to say, "Major C,
 the company commander, takes no interest in his work and is entirely in
 the hands of the Indian Officers who in their turn take bribes all round
 and allow no one, without a bribe to approach the Major Sahib," well
 knowing the said statement to be false

No. 68

CHARGE-SHEET.

Sec. 36 (c).

The accused, Nn , Sepoy, Regiment, is charged with—
Attempting to obtain for a person a pension by a false statement which he knew to be false,
 in that he, at , on , when examined by Major A B
 Regiment, who was investigating a claim in family pension preferred by
 C, inhabitant of , stated that he knew the said C
 to be the father of late Sepoy D Regiment, well knowing such
 statement to be false.

No. 69

CHARGE-SHEET.

Sec. 36 (d).

The accused, No. Havildar (Quartermaster-Havildar),
 Regiment, is charged with—
Knowingly furnishing a false return of clothing in his charge belonging to a person in the army,
 in that he, at , on , in a return of clothing in his
 charge belonging* to Lieutenant-Colonel A B
 commanding the Regiment, furnished by him to Lieutenant and
 Quartermaster C D Regiment, showed 154 suits of khaki clothing,
 value Rupers or thereabouts as in store on (date), which state-
 ment was, as he well knew, false

No. 70.

CHARGE-SHEET

Sec. 37.

The accused, No , Sepoy, Regiment, is charged with—
Making a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled,
 in that he, at , on , when he appeared before Major A
 D , an Enrolling Officer, for the purpose of being en-
 rolled for service in the Regiment, to the question put to him,
 "Have you ever served in the Army?" answered "No" whereas, he had
 served, as he well knew, in the Regiment

No. 71

CHARGE-SHEET

Sec. 33 (b).

The accused, No , Sepoy, Regiment, is charged with—
Intentionally offering an insult to a court-martial whilst sitting,
 in that he, at , on , when being tried by general court-
 martial, said in a loud tone "It is no use my making any defence, the
 court have been told by the General in convict me and of course they will"
 or words to that effect

No. 72

CHARGE-SHEET

Sec. 33 (c).

The accused, No. , Sepoy, Regiment, is charged with—
Having been duly affirmed before a court-martial, making a false statement which he knew to be false,
 in that he, at , on , when examined as a witness before
 a court-martial, stated on solemn affirmation that Sepoy B Regiment,
 the person charged before the said court, was in his, the witness's, com-
 pany in the line at , between 4 and 5 P.M. on , which
 statement was, as he well knew, false.

No. 73.

CHARGE-SHEET.

Sec. 32 (a).

The accuse, Subadar, Regiment, is charged with—
Behaving in a manner unbecoming the position and character of an officer,
 in that he, at , on , when orderly officer of the day,
 when it was reported to him that Sepoy A B had armed
 himself with a rifle and ammunition, and run amok defying anyone to
 arrest him, did not go to the spot, nor take any prompt or adequate
 measures to capture, disarm or shoot down, or cause to be captured, dis-

* Regimental property is technically the property of the Commanding Officer and should be so described.

armed or shot down the said A. B. either on receiving the report, or even subsequently when he became aware that the aforesaid A. B. had fired at and wounded Lieutenant C. D. of the same regiment.

No. 21

CHANGE-SHEET

The accused, 3rd class Sub-Assistant Surgeon, Indian Medical Depart. Sec. 32 (a).
ment, is charged with—

Behaving in a manner unbecoming the position and character of a warrant officer.

in that he, at _____, on _____, when in subordinate charge of the Cholera Camp at that station, through cowardice absented himself from his duties and absconded to his home at _____ in the _____ District, thereby endangering the lives of the patients under his care.

No. 75

CHARGE-SHEET

The accused, No. Havildar, Regiment, is charged with— Sec. 30(b).
Striking a person subject to the Indian Army Act being his subordinate
in rank.

in that he, at recruits struck Sepoy a pacesstick. . . on . . . , when drilling a squad of of the same Regiment on the shoulder with

No. 76.

CHARGE-SHEET

The accused, 1st class Sub-Assistant Surgeon, Indian Medical Depart. Sec. 39 (s),
ment, is charged with—

Attempting to commit suicide and doing an act towards the commission of the same.

in that he, at taking strichnine, on , attempted to commit suicide by

No 77

CHARGE-SHEET

The accused, 3rd class Sub-Assistant Surgeon, Indian Medical Depart. Sec. 39 (g), ment. is charged with—

Accepting for himself a gratification as a motive for procuring leave of absence for a person in the service.

in that he, at _____, on _____, accepted the sum of Rupees _____ from Sepoy, _____ Regiment, as a motive for procuring leave of absence for the said sepoy on medical grounds.

No. 78

CHARACTER SHEET.

The accused, No. Havildar, Regiment, is charged with— Sec. 39 (A).

Neglecting to obey Regimental orders.

in that he, at _____, on _____
No _____, dated _____, is _____
officer in charge of ammunition to _____
immediately on his return from the _____
cases of the casualties of _____
after his return _____

No. 73

CHARGE-SHEET

The accused, Jemadar,	Regiment, is charged with—	First charge.
-----------------------	----------------------------	---------------

An act prejudicial to good order and military discipline.

in that he, at _____, on _____, when Superintendent at the butta during the repetition of Musketry Practice No _____, by certain casuals of his regiment, wilfully caused it to be signalled to the firing point that four fair hits had been made on No 3 target, whereas actually only one fair hit and one ricochet had been made on the said target, as he well knew.

An omission prejudicial to good order and military discipline.

lu that he, at _____, on _____, when Superintendent at the butts (Alternative.)
on the occasion mentioned in the first charge, omitted to exercise proper Sec. 59 (f).
care in checking the targets, and thereby caused it to be signalled to the
firing point that four fair hits had been made on No. 3 target, whereas
actually only one fair hit and one ricochet had been made on the said
target.

Second charge.
(Alternative.)
Sec. 32 (i).

No. 80

CHARGE SHEET

Sec. 39 (d). The accused, No. , Naick, Regiment, is charged with—
An omission prejudicial to good order and military discipline,
 In that he, at , on , after being duly warned by Havildar , to parade the defaulters at 3 P.M. on that day, omitted to do so.
Note—This form of charge is applicable when wilful disobedience is not imputed.

No. 81.

CHARGE SHEET

Sec. 39 (f). The accused, No. , Duffadar, Regiment is charged with—
An omission prejudicial to good order and military discipline,
 In that he, at , between the and , when in charge of the Government's forage in the Rukh, omitted to exercise a proper supervision over the operations of grass-cutting and stacking therein, and the issue of grass therefrom, and by such omission caused a loss to Government of Rupera or thereabouts

No. 82.

CHARGE SHEET

Sec. 39-A read with Sec. 33 (b). The accused, No. Havildar, Regiment, is charged with—
Attempting to release without proper authority a prisoner placed under his charge and doing an act towards the commission of the same,
 In that he, at , on , when in command of the quarter guard of the Regiment attempted to release without authority Sepoy who was confined in the said quarter guard and, with the intention of releasing the said Sepoy , unlocked the door of the prisoner's room.

No. 83

CHARGE SHEET

Sec. 39-A read with Sec. 27 (a). The accused, No. , Lance Duffadar, Regiment, is charged with—
Attempting to excite a mutiny and doing an act towards the commission of the same,
 In that he, at , on , attempted to excite the non-commissioned officers and men of , troop , squadron , regiment , to combine together and refuse to eat their rations next day and to demand from Lieutenant Colonel , commanding the said regiment that Jemadar he removed from his employment as Indian Officer in charge of ration issue and to this end in the lines of the said troop addressed Duffadar Naick , Sower (Lance Naick) and about ten other men belonging to the said troop in language to the effect following that is to say (set forth the language used in the endeavour to excite mutiny)

No. 84

CHARGE SHEET

Sec. 40. The accused, No. , Sepoy, Regiment, is charged with—
Abetment within the meaning of the Indian Penal Code of an offence punishable under the Indian Army Act,
 In that he, at , on , when sentry over the Fort Magazine Guard between 3 A.M. by omitting to keep on the alert, intentionally aided Sepoy of the same regiment to steal one box of ammunition, value , the property of Government, and thereby abetted within the meaning of the Indian Penal Code an offence punishable under section 31 (d) of the Indian Army Act.

Note—If there is any doubt as to the assistance being intentional, an alternative charge under section 39 (f) may be added

No. 85

CHARGE SHEET

Sec. 41. The accused, No. , Sepoy, Regiment, is charged with—
In a place beyond British India committing a civil offence, that is to say, "Voluntarily causing grievous hurt,"
 In that he, at , on , in the territories of His Highness the Maharaja of , by beating a villager named with a heavy stick, broke the arm of the said

No. 85

CHARGE SHEET.

The accused, No. , Sepoy, Regiment, is charged with— Sec. 42.
Committing murder against a person subject to military law,
 in that he, at , on , by causing the death of Subadar,
 Regiment, committed murder.

No. 87.

CHARGE SHEET

The accused, No. , Sepoy, Regiment, is charged with— Sec. 42.
Attempting to commit murder against a person subject to military law,
 in that he, at , on , fired two shots from a rifle at
 Jemadar, Regiment, with intent to kill him, and thereby wounded
 the said Jemadar in the right breast and left thigh

No. 88.

CHARGE SHEET

The accused, No. , Sepoy, Regiment, is charged with— Sec. 42
Voluntarily causing hurt against a person subject to military law,
 in that he, at , on , voluntarily caused hurt to Sepoy,
 Regiment, by striking him on the shoulder and head with a
 clubbed rifle

THIRD APPENDIX.

FORMS AS TO COURTS-MARTIAL.

FORMS FOR ASSEMBLY OF COURTS-MARTIAL.

No. 1.—General and District.

I. A. F. D-916. *Form of order for the Assembly of a General (or District) Court-Martial under the Indian Army Act.*

Orders by
Commanding the
(Place Date)

The detail of officers as mentioned below will assemble at
on the day of
for the purpose of trying by a
court-martial the accused person (persons) named in the margin (and
other person or persons as may be brought before them).

[Seven officers are not, due regard being had to the public service,
able]

The senior officer to sit as President.

MEMBERS

WAITING MEMBERS

JUDGE-ADVOCATE [or Superintending Officer]

is appointed Judge-Advoca
superintending O

INTERPRETER

is appointed inter

PROSECUTOR

is appointed Prosec

The accused will be warned, and all witnesses duly required to
The proceedings (of which only one copy is required) will be for

fo

Signed this day of

* Here enter any order regarding Counsel—vide I. A. A. Rules 82 &

NOTE.—These
members and
the waiting
members may
be mentioned
by name, or the
number and
rank and the
mode of ap-
pointment may
alone be named.

I. A. F. F-936.

No. 2.—Summary General.

[See combined form for assembly and proceedings below.]

I. A. F. D-920.

No. 3.—Declaration for Suspension of Rules

Form of Declaration of Military Emergencies or the Necessities of Discipline under Rule 25.

* [the neces-
sities of disci-
pline.]
† [for inexplen-
dent.]
‡ State the rule
or rules which
cannot be
observed.
(See Rule 25.)

In my opinion [“military emergencies, namely (state them)"] reason
[impossible] to observe the provisions of rules, on the tr
by court-martial assembled pursu
the order of the
of

Signed at this day of

[Instruction.—This declaration must be signed by the officer whose of-
fice is given, and will be annexed to the proceedings. It should not be signed
in the Convening Order but should be a separate document.]

FORMS OF PROCEEDINGS OF COURTS MARTIAL.

Form of Proceedings of a General (or District) Court Martial (including 1: A. F. D-906, some of the incidents which may occur in vary the ordinary course of procedure, with instructions for the guidance of the Court).

PROCEEDINGS OF A COURT-MARTIAL, held at _____ 19
 on the _____ day of _____
 by order of _____ Commanding _____
 _____, dated the _____ day of _____
 19 _____

PRESIDENT

Rank,

Name.

Regiment.

MEMBERS.

Rank

Name

Regiment

_____, Judge-Advocate, [or Superintending Officer],

[—Interpreter,]

Trial of*—

at _____ o'clock the trial commences.

* Here insert
No, Rank,
Name and
Regiment, and
appointment
(if any).

(1) The order convening the Court is read [orally translated], and [a copy thereof], is marked _____ signed by the president [Judge-advocate or superintending officer], and attached to the proceedings.

The charge-sheet and the summary of evidence are laid before the Court.

[Instruction.—All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president [Judge-advocate or superintending officer], and attached to the proceedings.]

The Court satisfy themselves that _____ is not available to serve owing to _____; waiting member takes his place as a member of the court.

† Here insert reason.

The Court satisfy themselves as provided by Rules 31 and 32.

‡ Here insert Rank, name and Regiment.

(2)‡

§ Here state Rank and Name and Regiment (any).

appears as prosecutor, and takes his place.

The above named, the accused, is brought before the Court.

THIRD APPENDIX.

FORMS AS TO COURT

FORMS FOR A

No. 1

I.A. F. D-916. Form of order
Co.Orders to
CommanderThe
on the
for the
court
of

NOTE—The
members of
the court
must be
present
by name
during the
trial
and
no
person
shall

... of his objection to
... and is questioned by the accused
... to consider the objection.
... disallow the objection.
... is proposed, and the above decision is made known to the
or,
The Court allow the objection.
... is reopened, and the above decision is made known to
retires

... member—
... of the Court.
... only applies in the case of there being a waiting
...
He appears to the Court to be eligible and not disqualified
this court martial.
Question to accused—Do you object to be tried by
(the fresh member)?

Answer—
(If he objects, the objection will be dealt with in the
former objection.)
Question to the accused—What is your objection to
of the officers objected to)?
(This objection will be dealt with in the same
objection)

The Court adjourn for the purpose of fresh trial

or,

The Court is of the opinion that in the interests
good of the service, it is inexpedient to adjourn if
members being appointed, because [here state the

At o'clock on the Court rises
and an order appointing fresh officers is read, wait
and attached to the proceedings.

The Court satisfy themselves with respect to such as
by Rule 31.

are read over in
their names.
by any of the officers

throughout consecutively
the margin may stand for

more officers

to any other person?

until all the objections are ascertained)

your objection to (the junior officer objected

requests per-

takes his place

understand procedure as to challenging fresh officers, and the pro-
and or objection is allowed, will be the same as above)
[Instruct] and members of the Court, as constituted after the above
Jgs, are as follows:—

PRESIDENT.

Rank.	Name	Regiment.
_____	_____	_____

MEMBERS

Rank.	Name.	Regiment
_____	_____	_____
_____	_____	_____
_____	_____	_____

The president, members, and judge advocate [superintending officer] are
duly sworn (or affirmed) (also any officer under instruction).

[Instruction—(1) The witnesses if in Court, other than the prosecutor,
should be ordered out of the Court at this stage of the proceedings]

(2) Also any interpreter and short-hand writer should be now sworn.]

Question to the
accused.

Do you object to _____ as interpreter?

A

[Instruction—In case of objection the same procedure will be followed
as in the case of an objection to a member of the Court.]

Do you object to _____ as short hand
writer?

[Instruction—In case of objection the same procedure will be followed
as in the case of an objection to a member of the Court.]

CHARGE SHEET

(3) The charge-sheet is signed by the president, [judge-advocate or super- Charge sheet,
intending officer] marked and annexed to the proceedings.

The accused is arraigned upon each charge in the abovementioned
charge-sheet

Are you guilty or not guilty of the [first] charge against you, which
you have heard read?

Question to the
accused

A

[Instruction—When there is more than one charge the foregoing question
will be asked after each charge is read, the number of the charge being
stated.]

[Instruction—If the accused pleads guilty to any charge, the provisions
of Rule 42 (ii) must be complied with, and the fact that they have been
complied with must be recorded.]

VARIATIONS

The accused objects to the charge
What is your objection?

Question to the
accused.

The Court is closed to consider their decision

Done

The Court disallow the objection [or, the Court allow the objection,
and agree to report to the convening officer].

The Court is re-opened, and the above decision is read to the accused

VARIATION

appears as counsel for the prosecutor.
appears to assist [or as counsel for] the accused.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over?

No.

[Instruction—The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.]

VARIATIONS.

CHALLENGING OFFICERS

Answer—I object to

Question to accused—Do you object to any other person?

(This question must be repeated until all the objections are ascertained.)

Answer.—

Question to accused.—What is your objection to (the junior officer objected to)?

Answer by accused.—

The accused in support of his objection to _____, requests permission to call _____ etc., etc.
is called into Court, and is questioned by the accused.

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused

or,

Decision.—The Court allow the objection.

The Court is re-opened, and the above decision is made known to the accused

retires.

* Insert Rank,
Name and
Regiment.

Fresh Member.—*

takes his place as a member

of the Court

(This only applies in the case of there being a waiting member of the Court)

He appears to the Court to be eligible and not disqualified to serve on this court martial

Question to accused—Do you object to be tried by (the fresh member)?

Answer —

(If he objects, the objection will be dealt with in the same manner as the former objection)

Question to the accused—What is your objection to (the junior of the officers objected to)?

(This objection will be dealt with in the same manner as the former objection.)

The Court adjourn for the purpose of fresh members being appointed,

or,

The Court is of the opinion that in the interests of justice and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because [here state the reasons].

At _____ o'clock on _____ the Court resumed their proceedings, and an order appointing fresh officers is read, marked and attached to the proceedings.

The Court satisfy themselves with respect to such fresh officers as provided by Rule 31.

under the procedure as to challenging fresh officers, and the procedure of objection is allowed, will be the same as above.)
 (Instruction—The witnesses of the Court, as constituted after the above stage, are as follows—

PRESIDENT.

Rank	Name	Regiment

The president, members, and judge-advocate (superintending officer) are duly sworn (or affirmed) (also any officer under instruction)

[Instruction—(1) The witnesses if in Court, other than the prosecutor, should be ordered out of the Court at this stage of the proceedings]

(2) Also any interpreter and shorthand writer should be now sworn]

Do you object to as interpreter?

Question to the accused.
A.

[Instruction—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

Do you object to as shorthand writer?

[Instruction—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

CHARGE SHEET

(5) The charge-sheet is signed by the president, [judge-advocate or superintending officer] marked and annexed to the proceedings. Charge sheet

The accused is arraigned upon each charge in the abovementioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.
A.

[Instruction—When there is more than one charge the foregoing question will be asked after each charge is read, the number of the charge being stated.]

[Instruction—If the accused pleads guilty to any charge, the provisions of Rule 42 (B) must be complied with, and the fact that they have been complied with must be recorded.]

VARIATIONS

The accused objects to the charge
 What is your objection?

Question to the accused.

The Court is closed to consider their decision

Decision

The Court disallow the objection (or, the Court allow the objection, and agree to report to the convening officer).

The Court is re-opened, and the above decision is read to the accused.

*Plea to jurisdiction.
Question to the accused.*

The Court proceed to the trial [or adjourn]
The accused pleads to the general jurisdiction of the Court.
What are the grounds of your plea?

A.
Q.
A.

Do you wish to produce any evidence in support of your plea?

Witnesses.

Witness is examined on oath [or affirmation].
[Instruction—*The examination, etc., of the witnesses called by the accused and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (5) and (6). The prosecutor will be entitled to reply after all the evidence is given.*]

Decision.

The Court is closed to consider their decision.
The Court allow [or overrule] the plea [or, resolves to refer the point to the convening authority, or decide specially that].
The Court is re-opened, and the above decision is read to the accused.
The Court proceed to the trial [or adjourn].

VARIATION

*Plea in bar of trial.
Question to the accused.*

Accused, besides the plea of guilty [or, not guilty], offers a plea in bar of trial.
What are the grounds of your plea?

A.
Q.
A.

Do you wish to produce any evidence in support of your plea?

Witnesses.

Witness examined on oath [or affirmation].
[Instruction—*The examination, etc., of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (5) and (6). The prosecutor will be entitled to reply after all the evidence is given.*]

Decision.

The Court is closed to consider their decision.
The Court allow the plea and resolve to adjourn [or to proceed to the trial on another charge] [or the Court overrule the plea].
The Court is re-opened, and the above decision is read to the accused.
The Court adjourn [or proceed with the trial on another charge] [or proceed with the trial].

Refusal to plead

As the accused does not plead intelligibly [or refuses to plead to the above charge, or does not plead guilty to the above charge] the Court enter a plea of "not guilty."

PROCEEDINGS ON PLEA OF GUILTY.

(4) The accused [number] ^{rank} [name], name, regiment is found guilty of the charge [all the charges]

or

is found guilty of the charge, and is found not guilty of the charge.

[Instruction—*If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on those other charges; and in that case the Court will be re-opened and the charge on which the record is guilty must be read to the accused again.*]

The accused may in accordance with rule 41 (B) make any statement he wishes in reference to the charge.

The summary of evidence is read [orally translated], marked signed by the president [judge-advocate or superintending officer], and attached to the proceedings.

[Instruction—*If there is no summary of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the confirming officer to know all the circumstances connected with the case will be taken as in paragraph (3). No address will be allowed.*]

VARIATION.

The Court being satisfied from the statement of the accused [or the summary of evidence, or otherwise], that the accused did not

understand the effect of the plea of "guilty" alters the record and enters a plea of "not guilty."

[Instruction—The Court will then proceed in respect of the charge as in paragraph (5).]

Do you wish to make any statement in mitigation of punishment?

No or

Question to the accused.

A.

The accused in mitigation of punishment says [or if the statement is in writing hands in a written statement, which is read [orally translated], marked, signed by the president [judge-advocate or superintending officer], and attached to the proceedings].

[Instruction—If the statement of accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the statement is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

VARIATION

The Court give permission to the accused to call witnesses to prove his above statement that [here specify the statement which is to be proved].

[Instruction—(1) The examination, etc., of witnesses called in pursuance of this permission will proceed in the same manner as under paragraph (5).

(2) The procedure as to sentence, recommendation to mercy, and confirmation will be as in paragraphs (11) and (15).]

Evidence as to character
Question to the accused.

Do you wish to call any witnesses as to character?

Yes [No]

A.

[Instruction—(1) The examination, etc., of witnesses as to character will proceed as in paragraph (5).

(2) Evidence as to character and particulars of service will be taken as in paragraph (11).]

PROCEEDINGS ON PLEA OF NOT GUILTY

(5) [If the prosecutor makes an address.] The prosecutor makes the following address, [or, if the address is written, hands in a written address, which is read, [orally translated], marked, signed by the president [judge-advocate or superintending officer], and attached to the proceedings].

[Instruction—Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.]

The prosecutor proceeds to call witnesses

prosecutor being duly sworn [affirmed] is examined by the First witness for prosecution.

* Here insert his number, rank, name, and regiment, and appointment (if any), or other description.

Cross-examined by the Accused

Re-examined by the Prosecutor

Examined by the Court.

His evidence is read to the witness

[Instruction—The fact that Rule 127 (B), (C), (D) have been complied with should be recorded.]

The witness withdraws

VARIATIONS

The accused declines to cross-examine this witness

[Instruction—In every case where the accused does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.]

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

The accused [or the prosecutor] objects to the following question:—

The Court is closed to consider their decision.

The Court overrule [or allow] the objection, and the Court is re-opened and the decision announced.

The witness, on his evidence being read to him, makes the following explanation or alteration.—

Examined by the prosecutor as to the above explanation or alteration

Examined by the accused as to the above explanation or alteration.

The prosecutor and accused decline to examine him respecting the above explanation or alteration

*Second witness
for prosecution.*

being duly sworn, [affirmed], is examined by the prosecutor.
[The examination, etc., of this and every other witness proceeds as in the case of the first witness.]

Adjournment.

At o'clock the Court adjourn until o'clock on the

Second day.

On the of 19, at o'clock, the Court re-assembles, pursuant to adjournment, present the same members as on the of .

VARIATION.

[Instructions—(1) If a member is absent, and his absence will reduce the Court below the legal minimum and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.

(2) If the judge advocate or superintending officer is absent, and cannot attend within a reasonable time, the Court will adjourn, and the president will thereupon report the case to the convening authority. (See Rule 20)]

Absent member.

[Rank—Name—Regiment] being absent.

[The absence is accounted for.]

A medical certificate [or letter, or as the case may be] is produced, read, marked , and attached to the proceedings

The Court adjourn until .

or,

These being present [not less than the legal minimum] members, the trial is proceeded with.

*New Judge-
Advocate.*

An order bearing date appointing , to act as judge-advocate in the place of , who , is read marked , signed by the president [judge advocate] and attached to the proceedings, and the new judge advocate duly sworn [affirmed].

The trial is proceeded with

[Instructions—(1) If the Court, in consequence of the adjournment having been prolonged by the senior officer on the spot, or otherwise, do not meet on the day in which they previously adjourned, or if the adjournment was until further orders, the words "pursuant to adjournment" will be omitted from the above form, and the cause of their meeting at the above time will be entered in the proceedings.]

(2) If the place of meeting has been altered by orders or otherwise, the place of meeting and the reason for meeting at that place will be entered in the proceedings.]

Examination (cross-examination) of continued.

The prosecution is closed

DEFENCE.

Do you intend to call any witness in your defence?

Yes [No]

Is he a witness as to character only?

Question to accused.

A.
Q.

A.

VARIATION

If the accused is defended by counsel or by an officer having the rights of counsel.]

Do you wish to make any statement in addition to the address made by your counsel [or]?

(6) Instructions (1)—If the accused calls no witnesses to the facts of the case, adopt this and omit (7)

(7) If the accused is defended by counsel or an officer having the rights of counsel and does not wish to make a statement in addition to the address of such counsel or officer, adopt this and omit (7).

The prosecutor addresses the Court upon the evidence for the prosecution as follows [or, if the address is written, hands in a written address, which is read (orally translated) marked, signed by the president (judge-advocate or superintending officer) and attached to the proceedings.]

[Instruction—Where the address of the prosecutor is not in writing the Court should record so much as appears to them material and so much as the prosecutor requires to be recorded.]

Have you anything to say in your defence?

Question to accused.

VARIATIONS.

The Court, at the request of the accused, adjourn until to enable him to prepare his defence

The accused in his defence says [or hands in a written address, which is read (orally translated) marked, signed by the president (judge-advocate or superintending officer) and attached to the proceedings.]

[Instruction—If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.]

If the address is not in writing and not delivered by the accused himself the material portions should be recorded

In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

The accused calls the following witnesses as to character?
is duly sworn (affirmed)

Examined by the Accused

First witness
as to character.
Here insert
his number,
rank, name and
regiment and
appointment (if
any), or of
descri

Cross examined by the Prosecutor,

Re examined by the Accused

Examined by the Court.

His evidence is read to the witness

[Instruction—The fact that Rules 127 (D), (C), (D) have been complied with should be recorded]

The witness withdraws

VARIATION

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation or alteration

Examined by the accused as to the above explanation or alteration

Examined by the prosecutor as to the above explanation or alteration

The accused and prosecutor decline to examine him respecting the above explanation or alteration

(7) Instruction.—If the court calls witnesses to the facts of the case, or if an accused person, being defended by counsel or by an officer having the rights of counsel, wishes to make a statement in addition to the address by such counsel or officer, then omit paragraph (6), and adopt (7)

Question to
accused,

Have you anything to say in your defence?

VARIATION

The Court, at the request of the accused, adjourn until enable him to prepare his defence

The accused in his defence says (or if his address is in writing, hands in a written address, which is read (and translated) to him) signed by the president (judge advocate or superintending officer) and attached to the proceedings)

[Instructions—(1) If the defence of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

(2) If the address is not in writing and is not delivered by the accused himself, the material portions should be recorded.

(3) In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

Is duly sworn (affirmed).

* Here insert his name, rank, name and regiment and appointment (if any), or other description.

Examined by the Accused

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—The fact that Rule 127 (B), (C), (D) have been complied with should be recorded.]

The witness withdraws.

VARIATIONS.

The prosecutor declines to cross examine this witness

The witness, on his evidence being read to him, makes the following explanation or alteration

Examined by the accused as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration

The accused and prosecutor decline to examine him respecting such explanation or alteration.

[Where the accused is defended by counsel or, an officer having the rights of counsel.] The accused makes the following statement in addition to the address by his counsel for J. (a)

The prosecutor [by leave of the Court] calls witnesses in reply.

The accused makes the following address for, if the address is in writing, hands in a written address, which is read (orally translated) marked, signed by the president (judge-advocate or superintending officer), and attached to the proceedings).

The prosecutor makes the following reply (or, if the reply is in writing, hands in a written reply, which is read (orally translated) marked, signed by the president (judge-advocate or superintending officer) and attached to the proceedings);

or,

The prosecutor declines to make a reply.

[Instruction.—Where the reply of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded]

If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused himself, the material portions should be recorded.

In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken whether a request is made or not to record every point brought forward in the defence or in mitigation of punishment]

VARIATION

The Court, at the request of the accused, adjourn until to enable the accused to prepare his address

The Court, at the request of the prosecutor, adjourn until to enable the prosecutor to prepare his reply.

(a) The accused must make his statement at the close of the case for the prosecution and before the address by his counsel. See Rule 83.

Forfeiture of seniority.

(g) to take rank and precedence as if his appointment to the rank [grade or class] of _____ bore date _____

Forfeitures.

(h) to forfeit _____ past service for the purpose of _____; or to forfeit _____ good conduct [service] badges with the pay attached thereto; or

to forfeit the (state medal, clasp and decoration, or any of them, which is to be forfeited) with any annuity or gratuity attached thereto; or

to forfeit all arrears of pay and allowances and other public money due to him at the time of his dismissal; or

to forfeit pay and allowances for a period of _____; or

Stoppages.

to be put under stoppages of pay and allowances until he has made good the value of the following articles, viz, _____ (state the articles and the value of each) [or until he shall have made good the sum of _____ in respect of _____ (state the circumstances in respect of which the same is awarded)]

Reprimand or severe reprimand, Field Punishment.

(i) to suffer field punishment No. _____ for a period of _____

(j) to be reprimanded [or severely reprimanded].

RECOMMENDATION TO MERCY

The Court recommend the accused to mercy on the ground that—

SIGNATURE.

Signed at _____, this _____ day of _____ 19____.
(Signature.) _____ (Signature) _____
Judge-Advocate _____ President.
[or superintending officer]

REVISION

Revision.

(12) At _____ on the _____ day of _____ at _____ o'clock, the Court re-assemble by order of _____ for the purpose of re-considering their Present, the same members as on the _____

VARIATION.

[Instruction—If a member is absent and the absence will reduce the Court below the required minimum, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present shall thereupon report the case to the confining officer.]

Absent member.

[Rank, name, regiment] being absent.

[The absence is accounted for.]

A medical certificate [or letter, or in the case may be] is produced, read, marked _____ and attached to the proceedings

There being present _____ [not less than the required minimum] members the Court proceeds.

The letter [order or memorandum] directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding [finding and sentence] [or sentence] is read, marked _____, signed by the president [Judge-advocate or superintending officer] and attached to the proceedings.

[Instruction—If the confirming authority so orders, additional evidence may be taken on revision: such evidence will be taken as in paragraphs (5) and (6).]

Revised finding.

The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings:

(a) do now revoke their finding and sentence, and find and sentence the accused to _____

or,

Sentence.

(b) do now revoke their sentence, and now sentence the accused, etc., etc.

or,

(c) do now respectfully adhere to their sentence [or finding and sentence]

Signed at _____, this _____ day of _____ 19____.

(Signature.) _____

Judge-Advocate.

[or Superintending officer]

(Signature.) _____
President.

CONFIRMATION

(13) Confirmed.

Confirmation;

or,

Confirmed. I direct that the sentence of rigorous imprisonment shall be carried out by confinement in military custody,

or,

I vary the sentence so that it shall be as follows , and confirm the finding and the sentence as so varied,

or,

I confirm the finding and sentence of the Court, but mitigate (remit, or, commute)

or,

[Where it is necessary to confirm the special finding on several alternative charges]

I confirm the finding on and charges, and I confirm the special finding relating to the and charges, and declare that that finding amounts to a finding of guilty on the charge, and of not guilty on the and charges.

I confirm the sentence but mitigate (remit, or commute);

or,

[Where the confirming officer desires partly to reserve his confirmation.]

I confirm the finding of the Court on the and charges and reserve for confirmation by superior authority the finding on the and charges, and the sentence;

or,

I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority;

or,

I confirm the findings of the Court, and the sentence of the Court as to and reserve the sentence so far as it for confirmation by superior authority;

or,

[Where the finding is not confirmed]

Not confirmed [the reasons for non-confirmation may be stated]

Signed at , this day of 19 .

(Signature of Confirming Authority.)

[Instruction—Any remarks of the confirming authority should be separate from and form no part of the proceedings.]

[Where the declaration respecting a special finding on alternative charges is added subsequently to the confirmation (Rule 60).]

I declare that the special finding relating to the and charges amounts to a finding of guilty on the charge, and of not guilty on the and charges.

Signed at , this day of 19 .

(Signature of Authority)

I.A; F. D-907.

Form of Proceedings of a Summary Court-martial.

Proceedings of a Summary Court-martial held at _____
 on the _____ day of _____ 19 ____
 by _____

Commanding the _____ for the trial of all such accused
 persona as he may duly have brought before him.

PRESENT.

 Commanding the
 Attending the trial

[Interpreter.

(1) The Officers assemble at the _____
 and the trial commences at _____ o'clock _____ M.
 The accused No _____

of the _____
 is brought ("called" if a non-commissioned officer) into Court,
 sworn [affirmed]. _____ the Court is duly

_____ is duly sworn (affirmed) as Interpreter }

All witnesses are directed to withdraw from the Court.

The charge-sheet is read, [translated] and explained to the accused,
 marked _____, signed by the Court and attached to the proceedings.

[Instruction—The sanction of superior authority for trial by summary
 Court-martial should be entered, with the date and signature of the staff
 officer, at the foot of the charge-sheet, when such sanction is necessary.]

ARRAIGNMENT

Question to
accused.

By the Court—How say you _____ are you guilty, or not guilty
 of the _____ charge preferred against you?

A:

Question.

Are you guilty or not guilty of the _____ charge?

A.

[Instruction—If the accused pleads "Guilty" adopt (1) and omit (3),
 (4) and (5); if he pleads "Not Guilty" adopt (3) and (4) or (5) and
 omit (2), if he pleads "Guilty" to some charge or charges and "Not
 Guilty" to others (not alternative) adopt (3), (4) or (5), and (2).]

PROCEEDINGS ON PLEA OF GUILTY.

(2) The accused [number _____ rank _____]
 name _____] is found guilty of
 the charge [all the charges]

_____ or,
 is found guilty of the _____ charge, and is found not
 guilty of the _____ charge

[Instruction—If the trial proceeds upon any charge to which there is a
 plea of not guilty, the Court will not proceed upon the record of the plea
 of guilty until after the finding on those other charges; and in that case
 the charge on which the record is guilty must be read to the accused
 again.]

The summary of evidence is read [translated], explained, marked
 signed by the Court and attached to the proceedings

[Instruction—If there is no summary of evidence, sufficient evidence to
 enable the Court to determine the sentence and to enable the reviewing
 officer to know all the circumstances connected with the case will be taken
 as in paragraph (3) No address will be allowed.]

VARIATION.

The Court being satisfied from the statement of the accused [or the summary of evidence, or otherwise] that the accused did not understand the effect of the plea of "guilty" alters the record and enters a plea of "not guilty."

[Instruction.—The Court will then proceed in respect of this charge as in paragraph (5).]

Do you wish to make any statement in reference to the charge or in mitigation of punishment? Question to accused.

No; or

A.

The accused says

Do you wish to call any witnesses as to character?

Question to accused.

Yes [No]

A.

[Instructions.—(1) The examination of witnesses as to character will proceed as in paragraph (5).]

(2) Evidence as to character and particulars of service will be taken as in paragraph (6).]

PROCEEDINGS ON PLEA OF NOT GUILTY.

PROSECUTION.

Prosecution in witness.

(3)

examined by the court.

being sworn (affirmed) is

Religion to be recorded
(Hindu,
Muslim, Sikh,
Sikhs should be sworn.

Q.

A.

Cross-examined by the accused.

Re-examined by the Court.

His evidence is read to the witness.

[Instruction.—The fact that Rule 127 (B), (C), (D) have been complied with should be recorded.]

The witness withdraws.

VARIATIONS.

The accused declines to cross-examine this witness.

[Instruction.—In every case where the accused does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.)]

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

The Prosecution is closed.

Do you intend to call any witnesses in your defence?

Question to accused.

Yes

A.

DEFENCE.

The accused is called upon for his defence and states—

Defence.

(affirmed) is examined by the accused.

being duly sworn Defence.
in

I.A; F. D-207.

Form of Proceedings of a Summary Court-martial.

Proceedings of a Summary Court-martial held at _____
 on the _____ day of _____ 19 ____
 by _____

Commanding the _____ for the trial of all such accused
 persons as he may duly have brought before him.

PRESENT.

 Commanding the
 Attending the trial.

[Interpreter

(1) The Officers assemble at the _____
 and the trial commences at _____ o'clock _____
 The accused No. _____

of the _____
 is brought ("called" if a non-commissioned officer) into Court _____, the Court is duly
 sworn [affirmed].

Is duly sworn (affirmed) as Interpreter]

All witnesses are directed to withdraw from the Court.

The charge-sheet is read, (translated) and explained to the accused,
 marked _____, signed by the Court and attached to the proceedings.

[Instruction—The sanction of superior authority, for trial by summary
 Court-martial should be entered, with the date and signature of the staff
 officer, at the foot of the charge-sheet, when such sanction is necessary]

ARRAIGNMENT

Question to accused. By the Court—How say you _____ are you guilty, or not guilty
 of the _____ charge preferred against you?

A: _____
 Question. Are you guilty or not guilty of the _____ charge?

A.

[Instruction—If the accused pleads "Guilty" adopt (2) and omit (5),
 (4) and (5); if he pleads "Not Guilty" adopt (5) and (4) or (5) and
 omit (2), if he pleads "Guilty" to some charge or charges and "Not
 Guilty" to others (not alternative) adopt (5), (4) or (5), and (2).]

PROCEEDINGS ON PLEA OF GUILTY

(2) The accused [number _____ rank _____]
 name _____ regiment _____] is found guilty of
 the charge [all the charges]

or,

is found guilty of the _____ charge, and is found not
 guilty of the _____ charge.

[Instruction—If the trial proceeds upon any charge to which there is a
 plea of not guilty, the Court will not proceed upon the record of the plea
 of guilty until after the finding on those other charges; and in that case
 the charge on which the record, as guilty must be read to the accused
 again]

The summary of evidence is read [translated], explained, marked
 signed by the Court and attached to the proceedings

[Instruction—If there is no summary of evidence, sufficient evidence to
 enable the Court to determine the sentence and to enable the reviewing
 officer to know all the circumstances connected with the case will be taken
 as in paragraph (5) No address will be allowed]

Cross-examined by the Court.

Re-examined by the accused.

His evidence is read to the witness
 [Instruction—*The fact that Rules 227 (B), (C), (D) have been complied with should be recorded*]

The defence is closed.

REPLY.

Reply
 by witness.

(affirmed) is examined by the Court. , being duly sworn

Q:

A,

VERDICT OF THE COURT

Finding Not
 guilty.

(4) I am of opinion on the evidence before me that the accused
 No. is not guilty of the
 charge, (or all the charges,) and honourably acquit him of the same.
 The verdict is read out and the accused released. He is to return to
 his duty.

Signed at this day of
 19 .

Commencing the
 holding the trial

Guilty.

The trial closes at o'clock M.

(5) I am of opinion on the evidence before me that the accused
 No. is not guilty of the charge (and honourably acquit him of the same) but
 is guilty of the

or,

is guilty of the charge (all the charges)

PROCEEDINGS BEFORE SENTENCE.

(6) The following Minutes by the Court are read and explained.

[Instruction.—*If the Court does not record the accused person's convictions and character of its own knowledge, evidence as to these matters will be taken as in paragraph 11 of the Form of Proceedings for a General or District Court-martial.*]

It is within my own knowledge, from the records of the
 that the accused has been previously convicted by Court-
 martial or Criminal Court (see Certificate annexed).

That the following is a fair and true summary of the entries in his
 defaulters sheet exclusive of convictions by a Court-martial or a Criminal
 Court

	within last 12 months		since Enrolment.	
For		times		times
For		times		times
That he is at present undergoing sentence				
That, irrespective of this trial, his general character has been				

That his age is
his service is
and his rank is
that he has been in arrest (confinement) for days

That he is in possession of the following military decorations and
rewards. —

[Any recognized acts of gallantry or distinguished conduct should also be entered here]

SENTENCE AT THE COURT.

Taking all these matters into consideration, I now sentence the accused *Sentence.*
No
of the

- | | | |
|--|---|--|
| (a) to suffer rigorous [simple] imprisonment for | [of which shall be in solitary confinement] [and I direct that the sentence of rigorous imprisonment shall be carried out by confinement in military custody] | <i>Rigorous (simple) imprisonment, and solitary confinement.</i> |
| (b) to be dismissed from the service | | <i>Dismissal.</i> |
| (c) to be reduced to the rank of | [or to the rank] | <i>Reduction.</i> |
| (d) to take rank and precedence as if his appointment to the rank of | bore date | <i>Forfeiture of seniority.</i> |
| (e) to forfeit | past service for the purpose of | <i>Forfeitures.</i> |
| ; or | | |
| to forfeit | good conduct [service] badges, with the pay attached thereto, or | |
| to forfeit the | (state medal, clasp and decoration, or any of them, which is to be forfeited) with any annuity or gratuity attached thereto, or | |
| to forfeit all arrears of pay and allowancee and other public money due to him at the time of his dismissal, or | | |
| to forfeit pay and allowancee for a period of | ; or | |
| (f) to be put under stoppagee of pay and allowancee until he has made good the value of the following articles, viz, | (state the articles and the value of each) | <i>Stoppages.</i> |
| [or until he shall have made good the sum of | in respect of | |
| respect of which the same is awarded] | (state the circumstances in respect of which the same is awarded)] | |
| (g) to suffer field punishment No | for a period of | <i>Field punishment.</i> |
| Signed at | this day of 19 | |

Commanding the
holding the trial

The trial closee at
o'clock M

REMARKS BY REVIEWING OFFICER
(Indian Army Act, section 103)

His evidence is re-
[Instruction—The
with should be recor-

Reply
is: witness.

(affirmed) is examined

Q:

A:

Finding Not
guilty.

(4) I am of opin
No.
charge, for all the c
The verdict is r
his duty.
Signed at

Guilty.

Commanding the
holding the trial
The trial closes
(5) I am of op.
No
is not guilty of the
is guilty of the
is guilty of the chr-

(6) The following
[Instruction—If
tions and character
will be taken as in)
or District Court
It is within my c
that the accused i
martist or Criminal
That the followi
defaulter sheet exch
Court

12

For

For

That he is at pe

That, irrespective

SCHEDULE.

Date 19 . . .

Name of alleged offender *	Offence charged.	Plea	Finding, and if convicted, sentence †	How dealt with by confirming officer ‡
1	2	3	4	5
Ram Rux (Bannia) . . .	Theft of Government property.	Gilty	Gilty. Rigorous imprisonment for . . .	Confirmed 1 remitted A—B—
262, Sepoy Jhanda Singh, —Regiment.	Breaking into house for plunder.	Not Gilty	Gilty. Field punishment, No. 1, for two months.	Confirmed, but committed to full punishment No 1 for three months. A—B—
564, Sowar Hussain Khan, —Regiment.	Sleeping on post in time of war.	Not Gilty	Gilty. Death by being shot to death. Recommended to mercy	Confirmed A—B—
Person accompanying force (name unknown), white jacket and trousers, scar on right cheek.	Impeding Provost-marshal.	Not Gilty	Not Gilty	Confirmed A—B—
Sepoy in uniform of — Regiment (name unknown).	Civil offence Rape . . .	Not Gilty	Gilty Transportation for life.	Confirmed. A—B—

A— Convening Officer. B— President. C— D— E— Superintending Officer (if any).

* If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

† Recommendation to mercy to be inserted in this column

‡ If confirmation is not required this column should be left blank. See Indian Army Act, section 63.

B.—CERTIFICATE OF PRESIDENT AS TO PROCEEDINGS.

I certify that the above Court assembled on the _____ day
 of _____ 19 , and duly tried the person named in the said
 schedule, and that the plea, finding and sentence in the case of such
 person were as stated in the third and fourth columns of that schedule. each such

I further certify that the members of the Court, the witnesses and the
 interpreter were duly sworn or affirmed.

Signed at (place) _____ this _____ day of
 19 .

(Signature of President.)

C.—CONFIRMATION.

[In cases in which confirmation is required by section 88 of the Indian
 Army Act]

I have dealt with the finding and sentence in the manner stated in the
findings sentences, last column of the said schedule, and, subject to what I have there stated

I hereby confirm the above finding and sentence
findings sentences.

Signed at (place) _____ this _____ day of _____ 19 .

(Signature of confirming officer.)

SCHEDULE.

Date 19 .

Name of alleged offender.*	Offence charged.	Plea	Finding, and if convicted, sentence †	How dealt with by confirming officer. ‡
1	2	3	4	5
Ram Dux (Danna)	Theft of Government property.	GUILTY	GUILTY Rigorous Imprisonment for	Confirmed. I remit A B
202. Sepoy Jhandu Singh, —Regiment.	Breaking into house for plunder.	Not GUILTY	GUILTY Field punishment, No. 1, for two months	
564. Sowar Hussain Khan, —Regiment.	Sleeping on post in time of war.	Not GUILTY	GUILTY Death by being shot to death Recommended to mercy.	Confirmed, but committed to field punishment No 1 for three months. A B
Person accompanying force (name unknown), white jacket and trousers, near on right cheek.	Impeding provost-marshal.	Not GUILTY	Not GUILTY	Confirmed A B
Sepoy in uniform of Regiment (name unknown).	Civil offence Rape	Not GUILTY	GUILTY. Transportation for life.	Confirmed. A B

A B C D E F
 Convening Officer. President.
 * If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.
 † If recommendation to mercy to be inserted in this column.
 ‡ If confirmation is not required this column should be left blank. See Indian Army Act, section 99.

MEMORANDA.

The following memoranda are intended for the guidance of commanding and convening officers and others in relation to courts-martial with a view to securing uniformity of practice in details not specially dealt with in the Indian Army Act Rules.

These Memoranda do not form part of the Appendices to the Indian Army Act Rules.

Commanding Officers.

(1) Before applying for the trial of an offender a commanding officer should satisfy himself—

- (a) that the accused is charged with an offence that is an offence against the Indian Army Act;
- (b) that the offender is not exempt from trial under the provisions of I. A. A. 67;
- (c) that the offender is still subject to the Indian Army Act;
- (d) that the offence is not one which he should dispose of himself summarily or one which he should and can try by summary court-martial (see R. A. 1, para 251) without reference (see I. A. A. 74) or, if it is one of those offences, that from its gravity or nature or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment;
- (e) that the evidence justifies the trial of the offender on the charge;
- (f) that the charge is properly framed under the appropriate section of the Indian Army Act.

(2) When making application for the trial of the offender, the commanding officer should satisfy himself that the following provisions are complied with—

- (a) the application for trial must be accompanied by all necessary documents;
- (b) the name of the officer who it is proposed should act as prosecutor must be stated on the application for trial;
- (c) when application is made for a general or district court-martial the name of the officer who investigated the case and of any others disqualified under rule 29 (B) (iii) from sitting on the court should be stated in the application;
- (d) when it is intended to prove any facts in respect of which any deduction from the pay and allowances (i.e., stoppages) of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge and the sum of the loss or damage it is intended to charge;
- (e) the charge sheet should be signed by the commanding officer of the accused person;
- (f) sufficient space should be left at the foot of the charge sheet for the orders of the convening officer or officer sanctioning trial under I. A. A. 74 to be entered. The place and date should be entered by the officer signing the orders;
- (g) the section of the Indian Army Act under which each charge is framed should be entered in the margin (in red ink) opposite the charge to which it refers;
- (h) all irrelevant and hearsay statements must be eliminated from the summary of evidence;
- (i) when part of the evidence is documentary, the statement of the officer made on producing the documents should be included in the summary;
- (j) A statement of evidence as to facts should commence by recording the place, date and time (if material) to which the evidence refers;
- (k) When the charge is for deficiency of kit, unless I. A. F. D-918 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete kit, or of the articles alleged to be deficient; the date and place of discovering any subsequent deficiencies, and that none of the articles have since been recovered, should be included in the summary of evidence. Any articles recovered will, of course, be omitted from the charge;
- (l) a statement that the requirements of rule 15 (D, E, F, G) have been complied with should be entered at the end of the summary of evidence and signed and dated by the officer taking the evidence. It may state by the accused, amounting to a

Charge-sheet.

Summary of evidence

(14) Where the value of arms, ammunition, equipment, or clothing is averred and proved, or where damage is averred and proved, the accused, if convicted, should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be dismissed, in case the latter part of the sentence should be remitted.

(15) Arrears of pay and allowances forfeited by sentence of court-martial under Indian Army Act, section 43 (A) (iii), cannot be applied to "making good" damage done. If, therefore, damage has been averred and proved, stoppages should be awarded even if the accused is also sentenced to forfeiture of arrears, so that the damage may first be "made good" and any balance remaining over be forfeited.

Forms and
documents.

(16) Included in Indian Army Form D-906 are two sets of pages "C" and "D"—one for proceedings on the plea of "Not guilty" and one for proceedings on the plea of "Guilty." When the pleas recorded are all "Not guilty" or all "Guilty" the set pertaining to the plea or pleas recorded, is alone to be used. When some of the pleas are "Not guilty" and some "Guilty," both sets will be used, the Court proceeding first on the plea or pleas of "Not guilty" up to and including the finding, and then on the plea of "Guilty."

(17) The charge sheet is to be inserted in the proceedings after the record of the arraignment of the accused; all other documents are to be attached at the end of the proceedings in the order of their production to the Court.

(18) Every document attached to the proceedings should be signed by the president or superintending officer and marked with a reference letter, preferably not one used in the Form of Proceedings.

(19) In the case of a plea of "Not guilty" the summary of evidence will not be attached to the proceedings, but will be enclosed with them when sent to the convening or reviewing officer.

(20) All erasure of written or printed matter, and all corrections should be initialled by the officer responsible for the record of the proceedings.

(21) Pages should be numbered consecutively up to the end of the proceedings, after they have put together in the order described above.

(22) Sufficient space should be left below the sentence and signature of the president for the minutes of confirmation and promulgation or remarks of the reviewing officer.

FOURTH APPENDIX.

WARRANTS UNDER SECTIONS 107 AND 109 OF THE I. A. F.
INDIAN ARMY ACT. D-911-A:

FORM A.

Warrant of commitment for use when a prisoner is sentenced to transportation (Indian Army Act, section 107).

To the Superintendent
of the (a)

Prison.

Whereas at a (b) Court-Martial, held at (Number,
on the day of , 19 Regiment
Rank, Name) of the
was convicted of (the offence to be briefly stated here, as "desertion,"
"corresponding with the enemy," "disobedience of lawful command" or
as the case may be)

And whereas the said (b) Court-Martial on the
day of , 19 passed the following sentence upon the
said (Name), that is to say:—

(Sentence to be entered in full, but without signature)

And whereas the said sentence has been duly confirmed by (c) as required
by law (d)

This is to require and authorise you to receive the said (Name) into
your custody in the said prison as by law is required, together with this
warrant, until he shall be delivered over by you with the said warrant to
the proper authority and custody for the purpose of undergoing the
aforesaid sentence of transportation. The aforesaid sentence has effect
from the (e)

Given under my hand at
 , 19 .

this the day of
Signature (f)

(a) Enter name of civil prison.

(b) General, or Summary General

(c) Name and description of confirming authority

(d) Add if necessary "with a remission of ."

(e) Enter date on which the original sentence was signed

(f) Signature of Commanding Officer of prison or other prescribed
officer—See Rule 152.

FORM D.

I. A. F.
D-911-C.

Warrant of commitment for use when a prisoner is sentenced to rigorous imprisonment which is to be undergone in a civil prison (Indian Army Act, section 107).

To the Superintendent

of the (a)

Prison.

Whereas at a (b)

Court-Martial held at

on the _____ day of _____ 19____ (Number,
Rank, Name) of the _____ Regiment
was duly convicted of (the offence to be briefly stated here, as "desertion,"
"theft," "receiving stolen goods," "fraud," "disobedience of lawful com-
mand" or as the case may be).

And whereas the said (b) _____ Court-Martial, on the
day of _____ 19____ passed the following sentence upon
the said (Name); that is to say:—

(Sentence to be entered in full, but without signature.)

And whereas the said sentence

has been duly confirmed by (d) as required by law (e)

(c) _____
is by law valid without confirmation.

This is to require and authorise you to receive the said (Name) into your custody together with this warrant, and there carry the aforesaid sentence of Rigorous Imprisonment into execution according to law. The sentence has effect from the (f).

Given under my hand at

this the _____

day of _____

19____

Signature (g)

-
- (a) Enter name of civil prison.
(b) General, District, Summary General or Summary.
(c) Strike out inapplicable words.
(d) Name and description of confirming authority.
(e) Add if necessary "with a remission of _____."
(f) Enter date on which the original sentence was signed.
(g) Signature of Commanding Officer of prisoner or other prescribed officer.—See Rules 152.

FORM C.

Warrant for use when a prisoner is pardoned or his trial set aside, or I. A. F. when the whole sentence, or the unexpired portion thereof, is remitted D-911-C, (Indian Army Act, section 109)

To the Superintendent

of the (a)

Prison.

Whereas (Number, Rank, Name) (late) of the
Regiment is confined in the (a) prison
under a warrant issued by (b) in pur-
suance of a sentence of (c) passed upon
him by a (d) Court Martial held at
on , and whereas (e) has,
in the exercise of the powers conferred upon him by the Indian Army
Act, passed the following order regarding the aforesaid sentence, that is to
say —

(f) _____

This is to require and authorise you to forthwith discharge the said
(Name) from your custody unless he is liable to be detained for some
other cause, and for your so discharging him this shall be your sufficient
warrant

Given under my hand at this the
day of , 19 .

Signature (g)

- (a) Enter name of civil prison
(b) Enter name or designation of officer who signed original warrant.
(c) Enter original sentence (If this was reduced by the Confirming Officer
or other superior authority the sentence should be entered thus.—
"2 years' rigorous imprisonment reduced by Confirming Officer to 1
year")
(d) General, District, Summary General or Summary.
(e) Name and designation of authority pardoning prisoner, mitigating
sentence or setting aside trial.
(f) Order to be set out in full
(g) Signature of prescribed officer—See Rule 153

FORM D

L. A. F.
D-911-D.

Warrant for use when a sentence of transportation is reduced by superior authority to one of a shorter period of the same (Indian Army Act, section 109)

To the Superintendent

of the (a)

Prison.

Whereas (Number, Rank, Name) (late) of the _____ Regiment
is confined in the (a) _____ prison under a warrant issued by
(b) _____ in pursuance of a sentence of (c) _____
passed upon him by a (d) _____ Court-Martial held at _____
on _____ and whereas (e) _____ has, in the exercise
of the powers conferred upon him by the Indian Army Act, passed the
following order regarding the aforesaid sentence, that is to say:—

(f) _____

This is to require and authorise you to keep the said (Name) in your
custody together with this warrant, in the said prison as by law is required
until he shall be delivered over by you with the said warrant to the
proper authority and custody for the purpose of his undergoing the
_____ he said order And this is further
_____ turn to me the original warrant of
_____ rent is issued The period of such

Given under my hand at _____ this the _____ day of _____, 19

Signature (h)

- (a) Enter name of civil prison.
(b) Enter name or designation of officer who signed original warrant.
(c) Enter original sentence (if this was reduced by the Confirming Officer
or other superior authority the sentence should be entered thus —
"2 years' rigorous imprisonment reduced by Confirming Officer to 1
year")
(d) General, or Summary General.
(e) Name and designation of authority varying the sentence.
(f) Order to be set out in full.
(g) Enter date on which original sentence was signed
(h) Signature of prescribed officer—See Rule 151.

FORM E.

Warrant for use when a sentence of rigorous imprisonment is reduced I. A. F.
by superior authority or when one of transportation is reduced to one of D-511-E.
rigorous imprisonment (Indian Army Act, section 172)

To the Superintendent

of the (a)

Prison.

Whereas (Number, Rank, Name) (late) of the _____ prison under a warrant
Regiment is confined in the (a) _____ in pursuance of a sentence of (c)
issued by (b) _____ passed upon him by a (d) _____ Court-Martial
held at _____ on _____, and whereas (e) _____
has, in the exercise of the powers conferred upon him by the Indian Army
Act, passed the following order regarding the aforesaid sentence; that is
to say:—

(f) _____

This is to require and authorise you to keep the said (Name) in your
custody together with this warrant, and there to carry into execution the
punishment of Rigorous Imprisonment under the said order according to
law. And this is further to require and authorise you to return to me
the original warrant of commitment in lieu whereof this warrant is issued.
The period of such Rigorous Imprisonment will reckon from the (g)

Given under my hand at _____ this the _____ day of _____, 19 ____.

Signature (h)

-
- (a) Enter name of civil prison
(b) Enter name or designation of officer who signed original warrant.
(c) Enter original sentence (if this was reduced by the Confirming Officer
or other superior authority the sentence should be entered thus:—
"2 years' rigorous imprisonment reduced by Confirming Officer to 1
year")
(d) General, District, Summary General or Summary
(e) Name and designation of authority varying the sentence
(f) Order to be set out in full.
(g) Enter date on which original sentence was signed.
(h) Signature of prescribed officer.—See Rule 153.

FORM F.

J. A. F.
D-911-F.

*Warrant for use when prisoner is to be delivered into military custody
(Indian Army Act, section 122).*

To the Superintendent

of the (a)

Prison.

Whereas (Number, Rank, Name) (1a) of the
Regiment is confined in the (c) prison under
a warrant issued by (b) in pursuance of a sen-
tence of (c) passed upon him by a (d)
Court-Martial held at on and
whereas (e) has in the exercise of the powers conferred
upon him by the Indian Army Act passed the following order regarding
the aforesaid sentence, that is to say:—

(f) _____

This is to require and authorise you to forthwith deliver the said
(Name) to the officer or non-commissioned officer bringing this warrant.

Given under my hand at this the day of
19 .

Signature (g)

- (a) Enter name of civil prison.
(b) Enter name or designation of officer who signed original warrant.
(c) Enter original sentence (if this was reduced by the Confirming Officer
or other superior authority the sentence should be entered thus:—
"2 years' rigorous imprisonment reduced by Confirming Officer to 1
year")
(d) General, District, Summary General or Summary.
(e) Name and designation of authority issuing order.
(f) Order to be set out in full.
(g) Signature of prescribed officer—See Rule 153

PART III.
THE INDIAN ARMY (SUSPENSION OF
SENTENCES) ACT.

(ACT XX of 1920.)

CONTENTS

Sections

- 1 Short title and construction.
- 2 Definitions.
- 3 Suspension of sentences.
- 4 Calculation of periods of sentence under suspension.
- 5 Power to set aside suspension or order remission.
- 6 Periodical review of suspended sentences.
- 7 Procedure on further sentence of offender whose sentence is suspended.
- 8 Saving of section 112, Act VIII of 1911.
- 9 Provision as to dismissal.
- 10 Repeal of Act IV of 1917.

very easily

ACT No. XX of 1920.

an Act to consolidate and amend the law relating to the suspension of sentences passed by Courts-martial under the Indian Army Act, 1911.

WHEREAS it is expedient to consolidate and amend the law relating to the suspension of sentences of imprisonment or transportation passed by Courts-martial on persons subject to the Indian Army Act, 1911; It is hereby enacted as follows:—

1. This Act may be called the Indian Army (Suspension of Sentences) Act, 1920, and shall be construed as one with the principal Act. Short title and construction.

NOTE.

The Act came into force on the 23rd March 1920

Shall be construed as one with the principal Act—i.e., this act is in effect an integral part of the Indian Army Act. The persons made subject to the principal Act are when so subject also subject to this Act and words or expressions defined in section 1 of the principal Act have, when used in this Act, to be construed in the same manner as they would have been, if used in the principal Act.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

- (a) "committed" means committed to prison or to confinement in military custody;
- (b) "competent military authority" means a superior military authority, or any general or other officer not below the rank of field officer duly authorised by a superior military authority;
- (c) "imprisonment" includes confinement in military custody;
- (d) "principal Act" means the Indian Army Act, 1911;
- (e) "sentence" means a sentence of transportation or imprisonment, whether originally passed on a person subject to the principal Act, or passed by way of reduction or commutation; and "sentenced" has the corresponding meaning; and
- (f) "superior military authority" means the Commander-in-Chief in India or any officer empowered under the principal Act to convene general Courts-martial or summary general Courts-martial.

NOTE.

The above definitions must be read as explained in paragraph 5 of Chapter II of Part I.

Competent military authority—The Commander-in-Chief in India has authorised all officers not below the rank of field officer commanding brigades in India to be competent military authorities.

3. (1) Where a person subject to the principal Act is sentenced, the confirming officer when confirming the sentence, or, in the case of a sentence which does not require confirmation, the officer holding the trial or the President of the Court-martial when passing sentence may, notwithstanding anything Suspension of sentences.

at the officer habitually passing sentence at

anything in the principal Army Act.

A superior military authority may, in any case, decide that no person sentenced to imprisonment shall be released on parole. It has been obtained. Sentences of imprisonment exceeding two years will, since only a general officer can pass such a sentence, always be passed by an officer who will himself be a superior military authority.

(b) A superior military authority under the provisions read with section 5 (a) can suspend a sentence, and again suspend it etc.; doing these things at any time, provided the offender is at the time in law. For it must be remembered that a superior authority cannot suspend or order a sentence into execution when the offender is subject to Indian military law. As to this of the Indian Army Act.

4. Any period during which a sentence is under suspension shall be reckoned as part of the term of such sentence.

NOTE.

Sentences, whether suspended or not, commence to run as provided in section 106 of the Indian Army Act. Suspension of a sentence does not affect section 106 in any way.

All sentences under suspension on March 23rd, 1920 (the date when the new Act came into force) commenced to run or resumed their currency on that date.

See also note to section 10.

variation of
terms of
sentence under
suspension.

5. A superior military authority may, at any time whilst a sentence is suspended under this Act, order—

Power to suspend sentence or order remission

- (a) that the offender be committed to undergo the unexpired portion of the sentence, or
- (b) that the sentence be remitted

NOTE

Sentences under suspension will normally be brought to the notice of a superior military authority if the competent military authority at the periodical review required by section 6 considers that the sentence ought not to be kept suspended. See note to section 6. A suspended sentence may, however, be brought to the notice of a superior military authority at any time with a view either to its remission or to the commitment of the offender to undergo it provided that the offender is still subject to the Indian Army Act and to this Act. See notes to sections 3 (2) (b) and 4. Power to remit under section 112 of the Indian Army Act is not, however, barred in these circumstances.

When an offender is committed to prison to undergo the unexpired portion of his sentence the warrant should show exactly what that unexpired portion is.

6. Where a sentence has been suspended under this Act, the case may at any time, and shall at intervals of not more than four months, be reconsidered by a competent military authority and if, on any such re-consideration, it appears to such authority that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall, if he is not also a superior military authority, refer the case to a superior military authority.

Periodical review of suspended sentences.

NOTE

Competent military authority can only therefore unless he is also a superior military authority—

- (a) keep a suspended sentence further suspended by ordering it to be brought forward for reconsideration on such and such a date not more than four months ahead; or
- (b) refer it to a superior military authority with a recommendation either that the offender be committed to undergo the unexpired portion of the sentence or that the sentence be remitted

7. Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

Procedure on further sentence of offender whose sentence is suspended.

- (a) if the future sentence is also suspended under this Act, the two sentences shall run concurrently;
- (b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed on the unexpired portion of the previous sentence, but both sentences shall run concurrently; and
- (c) if the further sentence is for a period of three months or less and is not suspended under this Act, the offender shall be committed on that sentence only, and the previous sentence shall (subject to any order which may be passed under section 5 or section 6) continue to be suspended.

NOTE

(b) and (c) For a period of three months or more. For a period of three months or less.—The case of a further sentence of exactly three months will be dealt with under clause (b).

(b) If the further sentence which is not suspended is for three months or more this clause operates exactly as if an order by a superior military authority putting the unexpired balance of the former sentence into

execution had been passed when the offender was sentenced for the second time. Committal warrants must, in order to comply with the provisions of the Prisoners Act (III of 1900), be forwarded to the authorities of the prison to which the offender is sent. It will generally be convenient to prepare separate warrants one in support of each sentence, and in preparing that in respect of the former sentence care must be taken to show exactly what is the unexpired balance which the offender has to undergo.

(c) If dismissal has been added to the further sentence and it is one which owing to no order as to its being undergone in military custody having been passed under section 107 of the Indian Army Act, has to be undergone in a civil prison, the offender should not be sent to such a prison until a superior military authority has had an opportunity for putting the unexpired portion of the former sentence into execution, if he considers this to be desirable. The reason is that, immediately on the offender being received into a civil prison on his second (unsuspended) sentence, the dismissal which accompanies it will take effect and he will cease to be subject to the Indian Army Act and to this Act. It will then be too late to order the unexpired balance of his original sentence into execution and he will entirely escape from undergoing it. Committal warrants should be prepared as explained in the note to clause (b) above.

Having of section 112, Act
VII of 1911

8. The powers conferred by this Act shall be in addition to, and not in derogation of, any powers as to the mitigation, remission or commutation of sentences conferred by the principal Act, and a superior military authority shall, as regards persons subject to that Act, be an authority having power to mitigate, remit or commute sentences under section 112 of that Act.

NOTE

This empowers superior military authorities, as defined in section 2 to imprisonment in section 112 of the Indian Army Act, to order the offender to be sent to a civil prison until a superior military authority has had an opportunity for putting the unexpired portion of the former sentence into execution, if he considers this to be desirable. The reason is that, immediately on the offender being received into a civil prison on his second (unsuspended) sentence, the dismissal which accompanies it will take effect and he will cease to be subject to the Indian Army Act and to this Act. It will then be too late to order the unexpired balance of his original sentence into execution and he will entirely escape from undergoing it. Committal warrants should be prepared as explained in the note to clause (b) above.

section 9

Provision as to
dismissal.

9. Where in addition to any other sentence the punishment of dismissal has been awarded by a Court-martial, and such other sentence is suspended under this Act, then, notwithstanding anything contained in the principal Act or in any rules made thereunder, such dismissal shall not take effect until so ordered by a superior military authority:

Provided that, if a sentence is remitted under this Act, the punishment of dismissal shall also be remitted.

NOTE

In the case of a sentence of dismissal combined with transportation or imprisonment which is suspended the dismissal does not take effect until so ordered by a superior military authority. This is so even if the transportation or imprisonment is subsequently ordered into execution by a superior military authority or is automatically put into execution under clause (b) of section 7. A superior military authority who orders into execution a sentence of transportation or of imprisonment other than imprisonment to be undergone in military custody should, if dismissal has been added to such sentence, as a rule order the dismissal to take effect when the offender is received into a civil prison. If the dismissal accompanies a sentence of transportation or imprisonment which is not suspended it takes effect as provided in Indian Army Act Rule 154, that is when the sentence is one of transportation or of imprisonment which has to be undergone in a civil prison it takes effect immediately on the offender being received into such a prison and he therefore ceases to be subject to the Indian Army Act and to this Act. In this connection see the notes to section 7.

Proviso.—The effect of this proviso is that whenever dismissal has been added to a sentence of transportation or imprisonment and such sentence

is remitted under this Act the dismissal is also automatically remitted. The remission of a sentence of transportation or imprisonment under section 112 of the Indian Army Act does not operate so as to remit a sentence of dismissal which accompanied such sentence. If a suspended sentence, to which dismissal has been added runs out whilst still under suspension the dismissal should as a rule be formally remitted under section 112 of the Indian Army Act by one of the officers empowered under that section to do so as this provision does not automatically remit such dismissals. The powers of remission under section 112 of the Indian Army Act which section 2 of this Act confers on all superior military authorities do not extend to sentences of dismissal. See the definition of sentence in section 2 (c) and the note to section 2.



PART IV.

MISCELLANEOUS ENACTMENTS AND STATUTORY RULES.

ACT No. XLV of 1860.

The Indian Penal Code.

CHAPTER I.

INTRODUCTION.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

1. This Act shall be called the Indian Penal Code, and shall take effect throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Victoria, Chapter 106 entitled "An Act for the better government of India."

Title and extent of operation of the Code.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories.

Punishment of offences committed within the said territories.

3. Any person liable, by any law passed by the Governor General of India in Council, to be tried for an offence committed beyond the limits of the said territories shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

Punishment of offences committed beyond, but which by law may be tried within the territories

4. The provisions of this Code apply also to any offence committed by—

Extension of Code to extra-territorial offences.

(1) any Native Indian subject of Her Majesty in any place without and beyond British India;

(2) any other British subject within the territories of any Native Prince or Chief in India;

(3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India

Explanation.—In this section the word "offence" includes every act committed outside British India, which, if committed in British India, would be punishable under this Code.

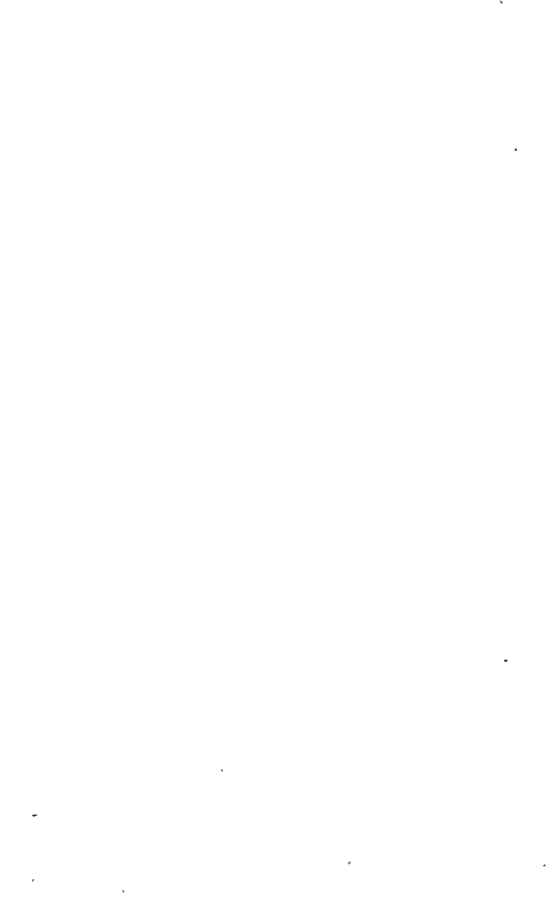
Illustrations

(a) A, a coolie, who is a Native Indian subject, commits a murder in Upanda. He can be tried and convicted of murder in any place in British India in which he may be found.

(b) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(c) C, a foreigner, who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(d) D, a British subject living in Jalore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.



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Preamble.
Title and extent of operation of the Code.

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3. Any person liable, by any law passed by the Governor General of India in Council, to be tried for an offence committed beyond the limits of the said territories shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

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4. The provisions of this Code apply also to any offence committed by—

Extension of Code to extra-territorial offences.

(1) any Native Indian subject of Her Majesty in any place without and beyond British India;

(2) any other British subject within the territories of any Native Prince or Chief in India;

(3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.

Explanation.—In this section the word "offence" includes every act committed outside British India, which, if committed in British India, would be punishable under this Code.

Illustrations.

(a) A, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(b) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(c) C, a foreigner, who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(d) D, a British subject living in Indore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.

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5. And that this Act is intended to repeal, vary, suspend, or amend any of the provisions of the Statute 3 & 4 William IV. Chapter XI. or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of soldiers, sailors or airmen, in the service of Her Majesty or of any special or local law.

CHAPTER II.

GENERAL EXPLANATIONS.

Exceptions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations

(a) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a Police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Sense of expression once explained.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man."
"Woman"

10. The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

"Person."

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Public."

12. The word "public" includes any class of the public or any community.

"Queen."

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servant of the Queen."

14. The words "servant of the Queen" denote all officers or servants continued, appointed or employed in India by or under the authority of the said 21 & 22 Victoria, Chapter 106, entitled "Government of India," or by or under the Government of India or any Govern

15. The words "British India" denote the territories ^{"British India."} which are or may become vested in Her Majesty by the said Statute 21 & 22 Victoria, Chapter 106, entitled "An Act for the better government of India".

16. The words "Government of India" denote the ^{"Government of India."} Governor General of India in Council, or, during the absence of the Governor General of India from his Council, the President in Council, or the Governor General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

17. The word "Government" denotes the person or ^{"Government."} persons authorised by law to administer executive Government in any part of British India.

18. The word "Presidency" denotes the territories sub- ^{"Presidency."} ject to the Government of a Presidency.

19. The word "Judge" denotes not only every person ^{"Judge."} who is officially designated as a Judge, but also every person

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment

Illustrations

(a) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge

(c) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

20. The words "Court of Justice" denote a Judge who ^{"Court of Justice."} is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits is a Court of Justice.

21. The words "public servant" denote a person falling ^{"Public servant."} under any of the descriptions hereinafter following, namely:—

First.—Every Covenanted servant of the Queen;

Second.—Every Commissioned Officer in the Military, Naval or Air Forces of the Queen while serving under the Government of India or any Government;

Third.—Every Judge;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person

Certain laws
not to be
affected by
this Act.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 & 4 William IV, Chapter 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers, soldiers or airmen, in the service of Her Majesty or of any special or local law.

CHAPTER II.

GENERAL EXPLANATIONS.

Definitions in
the Code to be
understood sub-
ject to excep-
tions.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations

(a) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a Police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Sense of expres-
sion once ex-
plained.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man."
"Woman"

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Person."

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Public"

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14. The words "servant of the Queen" denote all officers or servants continued, appointed or employed in India by or under the authority of the said Statute 21 & 22 Victoria, Chapter 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.

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Illustration

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits is a Court of Justice

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

First.—Every Covenanted servant of the Queen;

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Third.—Every Judge;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person

Explanation 2—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration:

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

"Valuable security—"

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

"A will"

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act"
"Omission"

33. The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

Acts done by several persons in furtherance of common intention

34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

When such an act is criminal by reason of its being done with a criminal knowledge or intention

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison accord-

ing to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act, by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death illegally omits to supply Z with food in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Persons concerned in criminal act may be guilty of different offences.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

39. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40. Except in the chapter and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter VA and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 389, 390 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

And in sections 141, 176, 177, 201, 202, 212, 216, and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

41. A "special law" is a law applicable to a particular subject.

42. A "local law" is a law applicable only to a particular part of British India.

43. The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Legal law."
"Local law."
"Illegal."
"Legally bound to do."

- "Injury." 44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.
- "Life." 45. The word "life" denotes the life of a human being unless the contrary appears from the context.
- "Death." 46. The word "death" denotes the death of a human being, unless the contrary appears from the context.
- "Animal." 47. The word "animal" denotes any living creature, other than a human being.
- "Vessel." 48. The word "vessel" denotes anything made for the conveyance by water of human beings or of property.
- "Year."
"Month." 49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.
- "Section" 50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.
- "Oath." 51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.
- "Good Faith." 52. Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

- "Punishments."
"Death." 53. The punishments to which offenders are liable under the provisions of this Code are,—
First.—Death;
Secondly.—Transportation;
Thirdly.—Penal servitude;
Fourthly.—Imprisonment, which is of two descriptions, namely:—
(1) Rigorous, that is, with hard labour.
(2) Simple.
Fifthly.—Forfeiture of property;
Sixthly.—Fine.
- Commutation of sentence of death. 54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.
- Commutation of sentence of transportation for life. 55. In every case in which sentence of transportation for life shall have been passed, the Government of India, or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

56. Whenever any person being an European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation according to the provisions of Act XXIV of 1855. Sentence of Europeans and Americans to penal servitude.

[Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.] Provided as to sentence for term exceeding ten years, but not for life.

57. In calculating fractions of terms of punishment transportation for life shall be reckoned as equivalent to transportation for twenty years. Fractions terms of punishment.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment. Offenders sentenced to transportation how dealt with until transported.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment. Transportation instead of imprisonment.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

61. Repealed.

62. Repealed.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive. Amount of fine.

64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, Sentence of imprisonment for non-payment of fine.

and in every case of an offence punishable [with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum Limit to imprisonment for non-payment of

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tion for a term not exceeding fourteen years

56. Whenever any person being an European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation according to the provisions of Act XXIV of 1855. Sentence of European and American to penal servitude instead of transportation according to the provisions of Act XXIV of 1855.

[Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.] Proviso as to sentence for term exceeding ten years, but not for life.

57. In calculating fractions of terms of punishment transportation for life shall be reckoned as equivalent to transportation for twenty years. Fraction of term of punishment.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment. The offender shall be dealt with as if sentenced to rigorous imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment. Transportation instead of imprisonment.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment. Transportation instead of imprisonment.

just any part of such imprisonment shall be rigorous and the simplest.

61. Repealed.

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63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive. Amount of fine.

64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, Sentence of imprisonment as well as fine.

and in every case of an offence punishable [with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine, Imprisonment or fine.

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum term for which the offender is liable to be imprisoned. Maximum term of imprisonment.

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- "Year."
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- "Section" 50. The word "section" denotes one of those portions of
a chapter of this Code which are distinguished by prefixed
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Transportation instead of imprisonment.

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Amount of fine.

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Sentence of imprisonment for non-payment of fine.

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- "Oath." 51. The word "oath" includes a solemn affirmation sub-
stituted by law for an oath, and any declaration required or
authorised by law to be made before a public servant or to
be used for the purpose of proof, whether in a Court of Jus-
tice or not.
- "Good Faith." 52. Nothing is said to be done or believed in good faith,
which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

- "Punish-
ments" 53. The punishments to which offenders are liable under
the provisions of this Code are,—
First.—Death;
Secondly.—Transportation;
Thirdly.—Penal servitude;
Fourthly.—Imprisonment, which is of two descriptions,
namely:—
(1) Rigorous, that is, with hard labour.
(2) Simple.
Fifthly.—Forfeiture of property;
Sixthly.—Fine.
- Commutation
of sentence of
death. 54. In every case in which sentence of death shall have
been passed, the Government of India or the Government of
the place within which the offender shall have been sentenced
may, without the consent of the offender, commute the punish-
ment for any other punishment provided by this Code.
- Commutation of
sentence of
transportation
for life. 55. In every case in which sentence of transportation for
life shall have been passed, the Government of India, or the
Government of the place within which the offender shall have
been sentenced may, without the consent of the offender,
commute the punishment for imprisonment of either descrip-
tion for a term not exceeding fourteen years.

56. Whenever any person being an European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation according to the provisions of Act XXIV of 1855

Sentence of Europeans and Americans to penal servitude.

[Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as the Court seems fit, but not for life.]

Proviso as to sentence for term exceeding ten years, but not for life.

57. In calculating fractions of terms of punishment transportation for life shall be reckoned as equivalent to transportation for twenty years.

Fractions terms of punishment.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

Offenders sentenced to transportation how dealt with until transported.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

Transportation instead of imprisonment.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

61. Repealed.

62. Repealed.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Amount of fine.

64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

When in fine for a term.

and in every case of an offence punishable [with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which

Limit imprisonment for a term.

fine when
imprisonment
and fine
awardable

Description of
imprisonment
for non-
payment of
fine.

Imprisonment
for non-
payment of
fine, when
offence
punishable
with fine
only

Imprisonment
to terminate
on payment
of fine

Termination
of imprisonment
on payment of
proportional
part of fine

fixed for the offence, if the offence be punishable with imprisonment as well as fine.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

67. If the offence be punishable with fine only [the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, [for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case]

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate

Illustration

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months or at any later time while A continues in imprisonment, A will be immediately discharged.

Fine leviable
within six
years, or
during im-
prisonment.
Death not to
discharge prop-
erty from
liability.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Limit of
punishment
of offence
made up of
several
offences

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishments of more than one of such his offences, unless it be so expressly provided.

[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]

Illustrations

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

Solitary confinement

a time not exceeding one month if the term of imprisonment shall not exceed six months

a time not exceeding two months if the term of imprisonment shall exceed six months and [shall not exceed one] year:

a time not exceeding three months if the term of imprisonment shall exceed one year

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Limit of solitary confinement

75. Whoever, having been convicted,—

(a) by a Court in British India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, or

Enhanced punishment for certain offences under (b. XII or XVII after previous conviction.

(b) by a Court or tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor General in Council or of any Local Government, of an offence which would, if committed in British India, have been punishable under those Chapters of this Code with like imprisonment for the like term,

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years

Act done in good faith for benefit of child or insane person by or by consent of guardian.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause, to that person: **Provided—**

Provides.

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt; or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear or misconception

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Exclusion of acts which are offences independently of harm caused.

91. The exceptions in sections 87 and 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has

no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. **Provided—**

First,—That this exception shall not extend to the intentional causing of death, or the attempting to cause death; Proviso-

Secondly—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity,

Thirdly—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly—That this exception shall not extend to the abetment of any offence to the committing of which offence it would not extend

Illustrations

(a) Z is thrown from his horse, and is senseless. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person. Communication made in good faith

Illustration

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, Act to which a person is compelled by threats
instant death to

Provided the person is not acting from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation I.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Act causing
slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence.

Things done
in private
defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of
private defence
of the body
and of property.

97. Every person has a right subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether moveable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Right of
private defence
against the act
of a person
of unsound
mind, etc

98. When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations

(a) Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against
which there
is no right
of private
defence

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to
which the
right may
be exercised.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

When the right of private defence of the body extends to causing death.

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault,

Secondly—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly—An assault with the intention of committing rape;

Fourthly—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

When such right extends to causing any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

Commencement and continuance of the right of private defence of the body.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

When the right of private defence of property extends to causing death.

First.—Robbery;

Secondly—House-breaking by night;

Thirdly—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrongdoer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Right of private defence against deadly assault when there is risk of harm to innocent person

106. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the killing of that risk.

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if in so firing he harms any of the children.

CHAPTER V.

OF ABETMENT

Abetment of a thing

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or.

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation strikes D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for this offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A consents with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

108A. A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

Illustration

A, in British India, instigates D, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

Abetment in
British India
of offence
outside it

Punishment
of abetment
if the act
abetted is com-
mitted in con-
sequence and
where no
express provi-
sion is made
for its
punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Punishment
of abetment
if person
abetted does
act with
different inten-
tion from that
of abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Liability of
abettor when
one act abet-
ted and different
act done.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment. Proviso

Illustrations

(a) A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act and not probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted and for act done.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences, and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

Illustration

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abettor present when offence is committed.

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence he not committed in consequence of the abetment, and no express provision is made by this Code, for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Abetment of offence punishable with death or transportation for life — if offence not committed;

If act causing
harm be
done in
consequence.

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine, and if any hurt be done to Z in consequence of the abetment, extend to fourteen years, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Abetment of
offence
punishable with
imprisonment—
If offence be not
committed;

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

If abettor or
person abetted
be a public
servant whose
duty it is to
prevent offence

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Abetting
commission of
offence by the
public, or by
more than ten
persons

117. Whoever abets the commission of an offence, by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

Concealing
design to
commit offence
punishable with
death or trans-
portation for
life—

118. Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or transportation for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years and in either case shall also be liable to fine.

If offence be committed, if offence be not committed

Illustration

A knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C a place in an opposite direction and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design A is punishable under this section

119. Whoever being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

Public servant concealing design to commit offence which it is his duty to prevent.

voluntarily conceals, by any act or illegal omission the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design

shall if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment or with such fine as is provided for that offence or with both,

If offence be committed,

or if the offence be punishable with death or transportation for life with imprisonment of either description for a term which may extend to ten years,

If offence be punishable with death, etc ;

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both

If offence be not committed.

Illustration

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

Concealing design to commit offence punishable with imprisonment—

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

If offence be committed.

If offence be not

CHAPTER VA.

CRIMINAL CONSPIRACY.

Definition of criminal conspiracy.

120A. When two or more persons agree to do, or cause to be done,

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Punishment of criminal conspiracy.

120B. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

Waging or attempting to wage war, or abetting waging of war, against the Queen.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, and shall also be liable to fine

Illustrations

(a) A joins an insurrection against the Queen. A has committed the offence defined in this section

(b) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

Conspiracy to commit offences punishable by section 121.

121A. Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

122. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine

Collecting arms, etc., with intention of waging war against the Queen.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

Concealing with intent to facilitate design to wage war

124. Whoever, with the intention of inducing or compelling the Governor General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor General of India or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor General, Governor, Lieutenant-Governor, or Member of Council,

Assaulting Governor General, Governor, etc., with intent to compel or restrain the exercise of any lawful power.

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor General, Governor, Lieutenant-Governor, or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Sedition

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Waging war against Asiatic Power in alliance with the Queen.

Committing depredation on territories of Power at peace with the Queen.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

Receiving property taken by war or depredation mentioned in sections 125 and 126

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Public servant voluntarily allowing prisoner of State or war to escape

128. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant negligently suffering such prisoner to escape

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Aiding escape of, rescuing, or harbouring, such prisoner.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation—In this section the words "officer, soldier or airman" include any person subject to the Army Act, the Indian Army Act, 1911, or the Air Force Act, as the case may be.

132. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Queen, shall if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of mutiny, if mutiny is committed in consequence thereof.

133. Whoever abets an assault by an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of assault by soldier or sailor on his superior officer, when in execution of his office.

134. Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of such assault if the assault is committed.

135. Whoever abets the desertion of any officer, soldier, sailor or airman in the Army, Navy or Air Force of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Abetment of desertion of soldier or sailor.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, has deserted, harbours such officer, soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring deserter.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army, Navy or Air Force of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Penalty on master of merchant vessel if he might have known of concealment but for some neglect of his duty or want of discipline on board.

138. Whoever abets what he knows to be an Act of insubordination by an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Queen shall, if such act of insubordination be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Abetment of act of insubordination by soldier or sailor.

138A. The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen.

Application of foregoing sections to the Indian Marine Service.

139. No person subject to the Army Act, the Indian Army Act, 1911, the Naval Discipline Act or the Air Force Act

Application of Act to Air Force.

Committing depredation on territories of Power at peace with the Queen.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

Receiving property taken by war or depredation mentioned in sections 125 and 126

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received

Public servant voluntarily allowing prisoner of State or war to escape

128. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant negligently suffering such prisoner to escape

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Aiding escape of, rescuing, or harbouring, such prisoner.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

Explanation—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE.

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation—In this section the words "officer, soldier and airman" include any person subject to the Army Act, the Indian Army Act, 1911, or the Air Force Act, as the case may be.

with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

It has been
commanded to
disperse.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof in prosecution of the common object of such assembly every member of such assembly is guilty of the offence of rioting.

It is 142.

147. Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment
forbidding.

148. Whoever is guilty of rioting being armed with a deadly weapon or with anything which, used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Rioting, armed
with deadly
weapon.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of the assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

150. Whoever hires or engages, or employs, or promotes or connives at the hiring, engagement, or employment of person to join or become a member of any unlawful assembly shall be punishable as a member of such unlawful assembly and for any offence which may be committed by any person as a member of such unlawful assembly, in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly or himself had committed such offence.

151. Whoever knowingly joins or continues in an assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender is punishable under section

152. Whoever assaults or attempts to obstruct, or hinders, or obstructs, or attempts to obstruct, any person in the discharge of his duty as such public officer, or in the dispersing of an unlawful assembly, or in the apprehending of any person, or in the preventing of any person from attending any public meeting, or in the preventing of any person from attending any public meeting, or in the preventing of any person from attending any public meeting, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

assault, or
in the

153. Whoever maliciously or wilfully gives provocation or knowing it to be likely that such provocation will be likely to cause the offence of rioting to be committed, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Act, is subject to punishment under this Code for any of the offences defined in this chapter.

Wearing garb
or carrying
token used by
soldier

140. Whoever, not being a soldier, sailor or airman in the Military, Naval or Air service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman with the intention that it may be believed that he is such a soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILITY.

Unlawful
assembly.

141. An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly, is—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Being member
of unlawful
assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Punishment.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Joining un-
lawful assembly,
armed with
deadly weapon.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or con-
tinuing in un-
lawful assem-
bly, knowing

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished

with imprisonment of either description for a term which may extend to two years, or with fine, or with both. It has been commanded to disperse.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. Rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Punishment for rioting.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Rioting, armed with deadly weapon.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. Every member of unlawful assembly guilty of offence committed in prosecution of common object.

150. Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence. Hiring or conniving at hiring, of persons to join unlawful assembly.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, or hinders the discharge of his duty as a public servant, or an unlawful assembly, or threatens to assault, or obstructs, or hinders the discharge of his duty as a public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Assaulting or obstructing public servant when suppressing riot, etc.

153. Whoever maliciously or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment. Wantonly giving provocation with intent to cause riot—If rioting be committed.

of either description for a term which may extend to six months, or with fine, or with both.

Promoting
enmity
between
classes

153A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects

Owner or
occupier of
land on which
an unlawful
assembly
is held.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed and any person having or claiming an interest in such land shall be punishable with fine not exceeding one thousand rupees.

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station

and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly

Liability of
person for
whose benefit
riot is com-
mitted.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place and for suppressing and dispersing the same.

Liability of
agent or owner
or occupier for
whose benefit
riot is com-
mitted.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157. Whoever harbours, receives or assembles in any house or premises in his occupation, or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

and whoever being so engaged or hired as aforesaid, goes armed or engages or offers to go armed with any deadly weapon or with anything which used as a weapon of offence is likely to cause death shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification"—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

P
e
t
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Illustrations

(c) A, a public servant, has obtained a title for Z, and thus induces Z to give A money as a reward for this service A has committed the offence defined in this section.

162. Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of : Lieutenant-Governor, [or : the Allahabad University.] o such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, [or with any member of the Senate of the Allahabad University,] or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

An advocate who receives a fee for arguing a case before a Judge, a person who receives pay for arranging and correcting a memorial addressed to Government, settling forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust; are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for abetment by public servant of offences defined in section 162 or 163.

Illustration

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Whoever, being a public servant accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant.

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant disobeying law, with intent to cause injury to any person.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with

Public servant framing an

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves, to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations

(a) A, a munsif obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward in A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or for rendering or attempting or with the British Government sum as a motive or reward his official functions to that in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

Taking gratification, in order, by corrupt or illegal means, to influence public servant,

162. Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Lieutenant-Governor, [or of the Allahabad University,] or such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Taking gratification for exercise of personal influence with public servant

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, [or with any member of the Senate of the Allahabad University,] or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge, a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust; are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for abetment by public servant of offences defined in section 162 or 163.

Illustration

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Whoever, being a public servant accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant.

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A, a Collector, before him it is the house being such a thing from Z without being required to pay a valuable thing.

(b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant disobeying law, with intent to cause injury to any person.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with

Public servant framing an incorrect document with intent to cause injury.

imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant
unlawfully
engaging in
trade

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant
unlawfully
buying or
bidding for
property

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, and the property, if purchased, shall be confiscated.

Personating a
public servant

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under color of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

Wearing garb or
carrying token
used by public
servant with
fraudulent
intent

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER IX-A—OF OFFENCES RELATING TO ELECTIONS, SECTIONS 171A TO 171H

CHAPTER X

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Abandoning to
avoid service of
summons or
other pro-
ceeding

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Preventing
service of sum-
mons or other
proceeding, or
preventing pub-
lication thereof

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice, or order,

or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both.

or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

Non attendance in obedience to an order from public servant

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section

(b) A, being legally bound to appear before a Zilla Judge, as a witness, in obedience to a summons issued by that Zilla Judge, intentionally omits to appear. A has committed the offence defined in this section

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or to deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

Omission to produce document to public servant by person legally bound to produce it.

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Illustration

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant,

or information to public servant by person legally bound to give it.

as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both,

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, being so bound by a public servant, as such, has passed through of Z, a wealthy man bound, under clause Code, to give early notice of the news that a body of men view to commit dacoity here A is guilty of

Explanation—In section 176 and in this section the word "offence" includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

Refusing oath or affirmation when duly required by public servant to make, it.

178. Whoever refuses to bind himself by an oath [or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to answer (public servant) authorised to question

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment,

for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180. Whoever refuses to sign any statement made by him, Refusing to sign statement. when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

181. Whoever, being legally bound by an oath [or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath [or affirmation], makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant— False information with intent to cause public servant to use his lawful power to the injury of another person.

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Resistance to taking of property by lawful authority of public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. Obstructing sale of property offered for by auth public

Illegal purchase
or bid for
property offered
for sale by
authority of
public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Obstructing
public servant
in discharge of
public function.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Omission to
assist public
servant when
bound by law
to give
assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Disobedience to
order duly promul-
gated by
public servant

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both,

and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not

pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Threat of injury to public servant.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered, as such, to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Threat of injury to induce person to refrain from applying for protection to public servant.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

191. Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence

Giving false evidence

Explanation 1—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document, false evidence

containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shopbook for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

Punishment
for false
evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1—A trial before a Court-martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Giving or
fabricating
false evidence
with intent to

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital [by the law of British India or England], shall be

punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine, procure conviction of capital offence.

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described If innocent person be thereby convicted and executed.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [by the law of British India or England] is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

Illustration

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence. Using evidence known to be false

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence. Issuing or signing false certificate

198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence. Using as true a certificate known to be false

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence. False statement made in declaration which is by law receivable as evidence

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence. Using as true such declaration knowing it to be false.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, Causing disappearance of evidence of offence, or giving false information to screen offender—

If a capital offence;

shall, if the offence which he knows or believes to have been committed is punishable with death, he be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with transportation;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment.

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Intentional omission to give information of offence by person bound to inform

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Giving false information respecting an offence committed

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—In sections 201 and 202 and in this section the word 'offence' includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Destruction of document to prevent its production as evidence

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False personation for purpose of act or proceeding in suit or prosecution.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering decree for sum not due

Illustration

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Dishonestly making false claim in Court.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently obtaining decree for sum not due.

person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

Capital offence;

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with transportation for life or with imprisonment;

if the offence is punishable with transportation for life or imprisonment for ten years he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

44 and 45 Vict. c. 24.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which if he had been guilty of it in British India, would have been punishable as an offence and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India; and every such act or omission shall for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife or the person to be apprehended.

Penalty for harbouring robbers or dacoits.

216A. Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery, or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

Definition of "harbour" in sections 212, 216 and 216A.

216B. In sections 212, 216 and 216A the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person in any way to evade apprehension.

Public servant disobeying direction of law with intent to save person from legal punishment or from arrest or from property.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save,

or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ty from for-
feiture

218. Whoever, being a public servant and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant
framing incor-
rect record or
writing with
intent to save
person from
punishment or
property from
forfeiture.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Public servant
in judicial pro-
ceeding corrupt-
ly making re-
port, etc., con-
trary to law

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment
for trial or
confinement
by person
having
authority who
knows that he
is acting con-
trary to law.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

Intentional
omission to
apprehend or
to keep in con-
finement
the part of
public servant
bound to
apprehend.

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, [or lawfully committed to custody] intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards, or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, [or if the person was lawfully committed to custody].

Escape from confinement or custody negligently suffered by public servant.

223. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence [or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody, was liable for the offence with which he was charged, or of which he was convicted.

Resistance or obstruction to lawful apprehension of another person.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten

years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

or, if the person to be apprehended or rescued, or attempted to be rescued is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine

225A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223 or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for.

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

225B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes, or attempts to escape, from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Unlawful return from transportation.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has

Violation of condition of remission

suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Intentional
insult or in-
terruption to
public servant
sitting in
judicial pro-
ceeding.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Personation
of a juror or
assessor.

229. Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled, or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

"Coin" defined
Queen's coin.

230. [Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.]

Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the Queen's coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

Illustrations

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin.
- (c) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d) The coin denominated as the Company's rupee is the Queen's coin.
- (e) The "Farukhabad" rupee, which was formerly used as money under the authority of the Government of India, is Queen's coin although it is no longer so used.

Counterfeiting
coin.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Counterfeiting
Queen's coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting the Queen's coin, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

234. Whoever makes or mends or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Queen's coin.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

If Queen's coin

236. Whoever, being within British India abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Abetting in India the counterfeiting out of India of coin

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeit coin.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows, or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Import or export of counterfeits of Queen's coin

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of Queen's coin, possessed with knowledge that it is counterfeit.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit, at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof, that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin, by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking coining instrument from mint.

245. Whoever, without lawful authority, takes out of any mint lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term

which may extend to seven years, and shall also be liable to fine. position of Queen's coin.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Altering appearance of coin with intent that it shall pass as coin of different description

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Altering appearance of Queen's coin with intent that it shall pass as coin of different description

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine. Delivery of coin, possessed with knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Delivery of Queen's coin possessed with knowledge that it is altered

252. Whoever fraudulently or may be committed, is in possession which the offence defined in either of has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Delivery of altered when he became possessed thereof

253. Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine. Possession of Queen's coin by person who knew it to be altered when he became possessed thereof

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in Delivery of coin as genuine which, when first possessed the deliv

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit, at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof, that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking coining instrument from mint.

245. Whoever, without lawful authority, takes out of any mint lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term

which may extend to seven years, and shall also be liable to ^{penalty of} fine.

248. Whoever performs on any coin any operation which ^{alters the appearance of} alters the appearance of that coin, with the intention that ^{the said coin shall pass as a coin of a different description.} the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for ^{a term which may extend to three years, and shall also be} a term which may extend to three years, and shall also be liable to fine.

249. Whoever performs on any of the Queen's coin any ^{operation which alters the appearance of that coin, with the} operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 247 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine or as a different coin from what it is, any coin in possession of which he knows that any such operation as that which is defined in

Delivery of coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit, at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof, that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking coining instrument from mint

245. Whoever, without lawful authority, takes out of any mint lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

Fraudulently or dishonestly diminishing weight or altering com-

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term

which may extend to seven years or a fine.

248. Whoever performs or causes to be performed the appearance of that coin, which is the said coin shall be liable to a fine not exceeding ten pounds or imprisonment for a term which may extend to three years or both.

249. Whoever performs or causes to be performed the appearance of that coin, which is the said coin shall be liable to a fine not exceeding ten pounds or imprisonment for a term which may extend to three years or both.

250. Whoever brings into the country any coin which is the said coin, or which has been committed and being brought into the country becomes possessed of such coin, or attempts to do so, shall be liable to a fine not exceeding ten pounds or imprisonment for a term which may extend to three years or both.

251. Whoever brings into the country any coin which is the said coin, or which has been committed, and being brought into the country becomes possessed of such coin, or attempts to do so, shall be liable to a fine not exceeding ten pounds or imprisonment for a term which may extend to three years or both.

252. Whoever brings into the country any coin which is the said coin, or which has been committed, and being brought into the country becomes possessed of such coin, or attempts to do so, shall be liable to a fine not exceeding ten pounds or imprisonment for a term which may extend to three years or both.

253. Whoever brings into the country any coin which is the said coin, or which has been committed, and being brought into the country becomes possessed of such coin, or attempts to do so, shall be liable to a fine not exceeding ten pounds or imprisonment for a term which may extend to three years or both.

254. Whoever brings into the country any coin which is the said coin, or which has been committed, and being brought into the country becomes possessed of such coin, or attempts to do so, shall be liable to a fine not exceeding ten pounds or imprisonment for a term which may extend to three years or both.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit, at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof, that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin, by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking coining instrument from mint.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term

which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. stamp used for it, with intent to cause loss to Government.

262. Whoever fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both. Using Government stamp known to have been before used

263. Whoever fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Erase or mark denoting that stamp has been used.

263A. (1) Whoever—

- (a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or
- (b) has in his possession, without lawful excuse, any fictitious stamp, or
- (c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

Prohibition of fictitious stamps

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government," when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with Fraudulent use of false

did not know
to be altered.

sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

Counterfeiting
Government
stamp

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Having
possession of
instrument or
material for
counterfeiting
Government
stamp

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government, for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or
selling instru-
ment for coun-
terfeiting
Government
stamp

257. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counter-
feit Govern-
ment stamp

258. Whoever sells, or offers for sale, any stamp which he knows, or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having
possession of
counterfeit
Government
stamp

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as
genuine a
Government
stamp known
to be counter-
feit

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Erasing writ-
ing from sub-
stance bearing
Government
stamp, or re-
moving from
document a

261. Whoever fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp

which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

stamp used for it, with intent to cause loss to Government

262. Whoever fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Using Government stamp known to have been before used.

263. Whoever fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used or knowingly has in his possession or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both

Erasure or mark denoting that stamp has been used

263A. (1) Whoever—

Prohibition of fictitious stamps

- (a) makes, knowingly utters deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp or
- (b) has in his possession, without lawful excuse, any fictitious stamp, or
- (c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government," when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with

did not know
to be altered.

sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed

Counterfeiting
Government
stamp

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Having
possession of
instrument or
material for
counterfeiting
Government
stamp

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government, for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or
selling instru-
ment for coun-
terfeiting
Government
stamp

257. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counter-
feit Govern-
ment stamp.

258. Whoever sells, or offers for sale, any stamp which he knows, or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having
possession of
counterfeit
Government
stamp

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as
genuine a
Government
stamp known
to be counter-
feit

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Effacing writ-
ing from sub-
stance bearing
Government
stamp, or re-
moving from
document a

261. Whoever fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp

which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

262. Whoever fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263. Whoever fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

263A. (1) Whoever—

- (a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or
- (b) has in his possession, without lawful excuse, any fictitious stamp, or
- (c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government," when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's Dominions or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with

Counterfeiting
Government
stamp

sections 242, 243, 244 or 245 has been performed but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years or with fine to an amount which may extend to two times the value of the coin for which the altered coin is passed, or attempted to be passed.

Counterfeiting
Government
stamp

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Having
possession of
instrument or
material for
counterfeiting
Government
stamp

256. Whoever has in his possession any instrument or material for the purpose of being used or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government, for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Making or
selling instrument
or material for
counterfeiting
Government
stamp

257. Whoever makes or performs any part of the process of making or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counter-
feit Govern-
ment stamp

258. Whoever sells, or offers for sale, any stamp which he knows, or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having
possession of
counterfeit
Government
stamp

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as
genuine a
Government
stamp known
to be counter-
feit

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Erasing writ-
ing from sub-
stance bearing
Government
stamp, or re-
moving from
document a

261. Whoever fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp

which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

262. Whoever fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263. Whoever fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

263A. (1) Whoever—

- (a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or
- (b) has in his possession, without lawful excuse, any fictitious stamp, or
- (c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government," when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with

did not know
to be altered.

sections 216, 217, 218 or 219 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

Counterfeiting
Government
stamp

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Having
possession of
instrument or
material for
counterfeiting
Government
stamp

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government, for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making
instrument
material for
counterfeiting
Government
stamp

257. Whoever makes or performs any part of the process of making, or buys or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Selling or
offering for
sale, counterfeit
stamp

258. Whoever sells, or offers for sale, any stamp which he knows, or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having
possession of
counterfeit
Government
stamp

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as
genuine any
counterfeit
stamp known
to be counterfeit

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Erasing writing
from any
substance bearing
Government
stamp, or
writing on
any substance

261. Whoever fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp

which has been used, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Whoever adulterates any article of food or drink, with fine, or such article noxious as food or drink, intending to sell it as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of food or drink intended for sale

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of noxious food or drink.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy, or change the operation of such drug or medical preparation or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for any medicinal purpose as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Adulteration of drugs.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs.

276. Whoever knowingly sells, or offers or exposes for sale or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of drug as a different drug or preparation.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Fouling water of public spring or reservoir.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Making atmosphere noxious to health.

Instrument for weighing

Fraudulent use of false weight or measure.

Being in possession of false weight or measure.

Making or selling false weight or measure.

imprisonment of either description for a term which may extend to one year, or with fine, or with both. ^{n performed, but in time when he took it}
 265. Whoever fraudulently uses any ^{tion had been per-} false measure of length or capacity, or ^{ment of either de-} for or attempted any weight or any measure of length or capacity, or any weight or measure from what it is, shall be ^{times the value} punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267. Whoever makes, sells, or disposes of any instrument for weighing or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

Public nuisance

268. A person is guilty of a public nuisance ^{vi-} if he does any act, or is guilty of an illegal omission which causes common injury, danger, or annoyance to the public or to people in general who dwell or occupy property in the neighbourhood, or which must necessarily cause injury, obstruction, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

Negligent act likely to spread infection of disease dangerous to life

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Malignant act likely to spread infection of disease dangerous to life.

270. Whoever maliciously does any act which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disobedience to quarantine rule.

271. Whoever knowingly disobeys any rule promulgated by the Government of India, or by any local authority, for putting any vessel into a state of quarantine for regulating the intercourse of vessels in a port, or for regulating the intercourse of vessels in a port with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease is prevalent, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

which has been so stated that the adulterated article is so described that such stamp or description for a term which may extend to six months, shall be with fine or with both.

272. Each article as food or drink or article which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

273. Whoever sells or offers or exposes for sale or issues from a dispensary for medicinal purposes, food or drink or article which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or to change the operation of such drug or medical preparation or to make it noxious, intending that it shall be sold or used for or knowing it to be likely that it will be sold or used for any medicinal purpose as if it had not undergone such adulteration shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Whoever knowingly sells, or offers or exposes for sale or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Instrument for weighing

Fraudulent use of false weight or measure

Being in possession of false weight or measure.

Making or selling false weight or measure.

When performed, but in time when he took it. If it had been performed, he would have been liable to imprisonment of either description for a term which may extend to one year, or with fine, or with both.

265. Whoever fraudulently uses any false measure of length or capacity, or of any weight or any measure of length or capacity, or of any different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267. Whoever makes, sells, or disposes of any instrument for weighing or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

Public nuisance.

268. A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission which causes common injury, danger, or annoyance to the public or to people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use a public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

Negligent act likely to spread infection of disease dangerous to life.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Malignant act likely to spread infection of disease dangerous to life.

270. Whoever maliciously does any act which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disobedience to quarantine rule.

271. Whoever knowingly disobeys any regulation promulgated by the Government of India, or by the Government of a Province, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a port with the shore or with other vessels, or for regulating the intercourse between places where an

attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily
causing grievous
hurt to deter
public servant
from his duty

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily
causing hurt
on provocation.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Voluntarily
causing grievous
hurt on provocation.

Explanation.—The last two sections are subject to the same provisions as exception 1, section 300.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Act endangering
life or personal
safety of others

causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing hurt to
any person by
act endangering
life or personal
safety of others

to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

Causing
grievous hurt
to any person
by act endangering
life or personal
safety of others

ment.

so as to wrong
in which restraint,
to restrain

over land or
to have a

tion for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt
by means of
poison, etc.,
with intent to
commit an
offence

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating, or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily
causing grievous
hurt to
extort property,
or to constrain
to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily
causing hurt
to extort
confession, or to
compel
restoration of
property

330. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustra-

(a) A, a police-officer, has committed a crime.

(b) A, a police-officer, has obtained from B certain stolen property.

(c) A, a revenue officer, has obtained from B certain arrears of rent.

(d) A, a zamindar, has obtained from B his rent.

331. Whoever

causes grievous hurt to extort from the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily
causing grievous
hurt to extort
confession, or
to compel
restoration of
property.

332. Whoever

causes grievous hurt to extort from the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily
causing hurt
to deter public
servant from
his duty.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Whoever, except in the case provided for by section 331, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for voluntarily causing hurt.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument, which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing hurt by dangerous weapons or means

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for voluntarily causing grievous hurt.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or an offence, which is illegal, shall be punished with imprisonment of either descrip-

Voluntarily causing hurt for the purpose of extorting property or an offence.

tion for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt
by means of
poison, etc.,
with intent to
commit an
offence

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating, or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily
causing grievous
hurt to —
extort property,
or to constrain
to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily
causing hurt
to extort con-
fession, or to
compel res-
toration of
property

330. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

Voluntarily
causing grievous
hurt to extort
confession, or
to compel
restoration of
property

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily
causing hurt
to deter public
servant from
his duty

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or

attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to deter public servant from his duty.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily causing hurt on provocation.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Voluntarily causing grievous hurt on provocation.

Explanation—The last two sections are subject to the same provision as exception 1, section 300.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Act endangering life or personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

Causing hurt by act endangering life or personal safety of others.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Causing grievous hurt by act endangering life or personal safety of others.

Of Wrongful Restraint and Wrongful Confinement.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful restraint.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a

lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Wrongful
confinement.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations.

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Punishment
for wrongful
restraint.

341. Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for
wrongful
confinement.

342. Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Wrongful
confinement
for three or
more days.

343. Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful
confinement
for ten or
more days

344. Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful
confinement
of person for
whose liberation
writ has been
issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

Wrongful
confinement
in secret.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful con-
finement to ex-
tort property or
constrain to
illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term

which may extend to three years, and shall also be liable to fine.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession, or compel restoration of property.

Of Criminal Force and Assault.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion, to that other or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact, with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.—

First.—By his own bodily power

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z, and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z, and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding a palanquin. A intending to rob Z, seizes the pole and stops the palanquin. Here, A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally without Z's consent,

in order to the commission of an offence, A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z, and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely, that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Punishment for assault or criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to deter public servant from discharge of his duty.

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to woman with intent to outrage her modesty.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force or attempt theft of property carried by a person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assault or criminal force in attempt wrongfully to confine a person.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Assault or criminal force on grave provocation.

Explanation.—The last section is subject to the same explanation as section 352.

Of Kidnapping, Abduction, Slavery and Forced Labour.

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

Kidnapping from British India.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Kidnapping from lawful guardianship.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Abduction

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Punishment for kidnapping.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting in order to murder

364. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Kidnapping or abducting with intent secretly and wrongfully to confine person

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting woman to compel her marriage, etc

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,

and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punished as aforesaid.

366A. Whoever, by any means whatsoever, induces any minor to go from any place or to do any act which he or she may be, or knowing or believing that he or she will be, or knowing or believing that it is likely that he or she will be, forced or seduced to illicit intercourse, shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.

366B. Whoever imports into British India from any country outside India any girl under the age of twenty-one years with intent that she may be, or knowing it to be, likely

that she will be, forced or seduced to illicit intercourse with another person,

and whoever with such intent or knowledge imports into British India from any State in India any such girl who has with the like intent or knowledge been imported into India, whether by himself or by another person,

shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to subject person to grievous hurt, slavery, &c.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

Wrongfully concealing or keeping in confinement, kidnapped or abducted person

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting child under ten years with intent to steal from its person.

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Habitual dealing in slaves.

372. Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Selling minor for purposes of prostitution, etc.

be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section, "illicit intercourse" means sexual intercourse between persons not

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Abduction.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Punishment for kidnapping.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Kidnapping or abducting with intent secretly and wrongfully to confine person

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting woman to compel her marriage, etc.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,

and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punished as aforesaid.

366A. Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

366B. Whoever imports into British India from any country outside India any girl under the age of twenty-one years with intent that she may be, or knowing it to be, likely

that she will be, forced or seduced to illicit intercourse with another person,

and whoever with such intent or knowledge imports into British India from any State in India any such girl with the like intent or knowledge been imported into India whether by himself or by another person,

shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be punished with imprisonment which may extend to ten years

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or conceals such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

372. Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I.—When a female under the age of eighteen years is sold, let for hire or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section, "illicit intercourse" means sexual intercourse between persons not

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high-road, not in the possession of any person, A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of Z's possession. Here, as A does not take dishonestly, he does not commit theft.

Punishment
for theft

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Theft in
dwelling-house,
etc.

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft by clerk
or servant of
property in
possession of
master.

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of heart, or of restraint to any person, in order to the committing of such theft or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft

Illustrations

(a) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Of Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property of valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion."

Illustrations

(a) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment or extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Extortion by putting a person in fear of death or grievous hurt.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

Extortion by threat of accusation of an offence punishable with death as transportation, etc.

Putting person in fear of accusation of offence in order to commit extortion.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed or attempted to commit an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Of Robbery and Dacoity.

Robbery.

When theft is robbery.

390. In all robbery there is either theft or extortion.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high-road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such but it is not robbery, unless Z is put in fear of the instant death of his child.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity."

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years. Punishment for robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. Attempt to commit robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine Voluntarily causing hurt in committing robbery

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Punishment for dacoity.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Dacoity with murder.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years. Robbery or dacoity, with attempt to cause death or grievous hurt.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years. Attempt to commit robbery or dacoity when armed with deadly weapon.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine Making preparation to commit dacoity.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Punishment for belonging to gang of dacoits.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. Punishment for belonging to gang of thieves.

Assembling for
purpose of
committing
dacoity.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of Criminal Misappropriation of Property.

Dishonest mis-
appropriation
of property.

403. Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft. But if A after discovering his mistake dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B being joint owners of a horse, A takes the horse out of B's possession intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(a) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and, if the offender at the time of such person's decease was employed by him as a clerk or servant the imprisonment may extend to seven years.

Dishonest misappropriation of property possessed by deceased person at the time of his death.

Illustration

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Of Criminal Breach of Trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Criminal breach of trust.

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions and buys shares in the Bank of Bengal for Z, instead of buying Company's paper there, though Z should suffer loss and should be entitled to bring a civil action against A on account of that loss, yet A not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a Revenue-officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the

Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend in three years, or with fine, or with both.

Criminal breach of trust by carrier, etc.

407. Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by clerk or servant.

408. Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant or agent.

409. Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of the receiving of Stolen Property

Stolen property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property," [whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India] But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing, or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Habitually dealing in stolen property.

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Assisting in concealment of stolen property.

Of Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to "cheat." Cheating.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he Cheating by personation.

or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Punishment
for cheating

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cheating with
knowledge that
criminal loss
may ensue to
person whose
interest offender
is bound to
protect.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment
for cheating
by personation.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating and
dishonestly
inducing
delivery of
property

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of Property.

Dishonest or
fraudulent
removal or
concealment
of property
to prevent
distribution
among creditors.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred to any person without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly
or fraudulently
preventing debt
being available
for creditors.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or
fraudulent ex-
ecution of deed
of transfer con-
taining false
statement of
consideration

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property.

Of Mischief

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Mischief.

Explanation 1—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Punishment for mischief.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief causing damage to the amount of fifty rupees.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming animal of the value of ten rupees.

or any other person is a person other than he or such person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

(a) A cheats by pretending to be a certain rich banker of the name A cheats by personation

(b) A cheats by pretending to be B, a person who is deceased cheats by personation

Punishment
for cheating

Cheating with
knowledge that
wrongful loss
may ensue to
person whose
interest offender
is bound to
protect

Punishment
for cheating
by personation

Cheating and
dishonestly
inducing
delivery of
property

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in a transaction to which the cheating relates, he was bound either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

420. Whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of Property

Dishonest or
fraudulent
removal or
concealment
of property
to prevent
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Dishonestly
or fraudulently
preventing debt
being available
for creditors.

Dishonest or
fraudulent exe-
cution of deed
of transfer con-
taining false
statement of
consideration

421. Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disposal or fraudulent removal or concealment of property.

Of Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Punishment for mischief.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief causing damage to the amount of fifty rupees.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming an animal of the value of ten rupees.

Mischief by
killing or maiming
large cattle, etc.,
of any value or
any artificial
the value of
five rupees

429. Whoever commits
mischief, or rendering
mule, buffalo, bull,
thereof, or any
wards, shall
tion for a term
or with both

Mischief by
injury to works
of irrigation or
by wrongfully
diverting water

430. Whoever
causes, or which
the supply of water
drift for human
for cleanliness or for
punished with imprisonment
which may extend to five

Mischief by
injury to public
road, bridge,
river or channel

431. Whoever commits
renders or which he knows
road, bridge, navigable river,
artificial impassable or less safe
works shall be punished with im
tion for a term which may extend
or with both

Mischief by
causing loss or
damage to public
drainage works
or with
fine or

432. Whoever commits mischief by
causes or which he knows to be likely to
or an obstruction to any public drainage
or damage shall be punished with imprisonment
tion for a term which may extend to
fine or with both

Mischief by
destroying,
removal of
land-mark
mark

433. Whoever commits mischief by destroying
any light-house or other light used as a
mark or buoy or other thing placed as a guide
or by any act which renders any such light
house, or other such thing as aforesaid less
for navigators, shall be punished with imprisonment
tion for a term which may extend to
fine, or with both.

Mischief by
destroying or
moving, etc.,
a land-mark
fixed by
public
authority.

434. Whoever commits mischief by destroying
any land-mark fixed
any act which re
be punished with
which may extend
authority of a public
land-mark less useful
of either description
or with fine, or

Mischief by
fire or explosive
substance with
intent to cause
damage to
amount of one
hundred rupees
(in
case of agricultural
produce)
ten rupees

435. Whoever
substance, intending
he will thereby cause
of one hundred rupees
agricultural produce)
with imprisonment of
extend to seven years.

Mischief by
fire or explosive
substance with
intent to destroy
house, etc.

436. Whoever causes
substance, intending
he will thereby cause, to
ordinarily used as a place
or as a place for the carrying
with transportation for life.

fire or
it to
build
a house
shall

description for a term which may extend to ten years, and shall also be liable to fine.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in section 437 committed by fire or explosive substance.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

Criminal trespass.

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

House-trespass.

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

Lurking house-trespass.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

Lurking house-trespass by night.

445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house

House-breaking.

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, river or channel.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by destroying, moving or, rendering less useful a light-house or sea-mark.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards [or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy house, etc.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Punishment for the mischief described in section 437 committed by fire or explosive substance.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine. Mischief committed after preparation made for causing death or hurt.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, Criminal trespass.

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass." House-trespass.

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass." Lurking house-trespass.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night." Lurking house-trespass by night.

445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house House-breaking.

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, river or channel.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by destroying, moving or rendering less useful a light-house or sea-mark.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards [or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy house, etc.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

442. Whoever commits criminal trespass by entering into, or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the trespasser's body is entering sufficient to constitute house-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

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445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, river or channel.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by destroying, moving, or rendering less useful a light-house or sea-mark.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards [or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy house, etc.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.

Possession of forged or counterfeit currency-notes or bank notes.

489D. Whoever makes, or performs any part of the process of making or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-notes, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank notes.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person, or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Breach of contract of service during voyage or journey.

Illustrations.

(a) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(b) A, a coolie, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(c) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(d) A, by unlawful means, compels B, a coolie, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dak company to drive his carriage for a month. B employs the dak company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

a counterfeit
trade mark or
property mark.

things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and
- (b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or
- (c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making a false
mark upon any
receptacle con-
taining goods.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for
making use of
any such false
mark.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section

Tampering with
property mark
with intent to
cause injury.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Of Currency-Notes and Bank-Notes

Counterfeiting
currency-notes
or bank-notes.

489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—For the purposes of this section and of sections 489B, 489C and 489D, the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

Taking as
genuine forged
or counterfeit
currency-notes
or bank notes.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Possession of forged or counterfeit currency-notes or bank notes.

489D. Whoever makes, or performs any part of the process of making or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-notes, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank notes.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person, or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Breach of contract of service during voyage or journey

Illustrations.

(a) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(b) A, a coolie, being bound by lawful contract to carry Z's baggage from one place to another, throws his baggage away. A has committed the offence defined in this section.

(c) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(d) A, by unlawful means, compels B, a coolie, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dak company to drive his carriage for a month. B employs the dak company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

Breach of contract to attend on and supply wants of helpless person.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to serve at distant place to which servant is conveyed at master's expense.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman or labourer, for a period not more than three years, at any place within British India to which by virtue of the contract he has been or is to be conveyed at the expense of such other voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless the employer has ill-treated him or neglected to perform the contract on his part.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marrying again during lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Same offence with concealment of former marriage from

495. Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former

marriage shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

person with whom subsequent marriage is contracted.

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Marriage ceremony fraudulently gone through without lawful marriage.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Adultery.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both

Enticing or taking away or detaining with criminal intent a married woman.

CHAPTER XXI.

OF DEFAMATION.

499. Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person

Defamation.

Explanation 1—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such

Explanation 3—An imputation in the form of an alternative or expressed ironically may amount to defamation.

Explanation 4—No imputation is said to harm a person's reputation, unless that imputation directly, or indirectly in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says—"Z is an honest man; he never stole B's watch"—intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

Imputation of truth which public good requires to be made or published.
Public conduct of public servants

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Publication of reports of proceedings of Courts

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Merits of case decided in Court or conduct of witnesses and others concerned.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Merits of public performance.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public,

or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent. Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by person having lawful authority over another.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court, a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils, a master censuring a servant in good faith for remissness in service, a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Accusation preferred in good faith to authorized person.

Illustration

If A in good faith accuses Z before a Magistrate, if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Imputation made in good faith by person for protection of his or other's interests.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that

Caution intended

good of person
to whom
conveyed or
for public
good.

Punishment for
defamation.

Printing or
engraving
matter known
to be
defamatory.

Sale of printed
or engraved
substance
containing
defamatory
matter.

such caution be intended for the good of the person
it is conveyed, or of some person in whom that pe-
interested, or for the public good.

*** 500.** Whoever defames another shall be punished with
simple imprisonment for a term which may extend to two
years, or with fine, or with both.

501. Whoever prints or engraves any matter, knowing
or having good reason to believe that such matter is defama-
tory of any person shall be punished with simple imprison-
ment for a term which may extend to two years, or with fine,
or with both.

502. Whoever sells or offers for sale any printed or
engraved substance containing defamatory matter, knowing
that it contains such matter, shall be punished with simple
imprisonment for a term which may extend to two years, or
with fine, or with both.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

Criminal
intimidation.

503. Whoever threatens another with any injury to his
person reputation or property, or to the person or reputation
of any one in whom that person is interested, with intent to
cause alarm to that person or to cause that person to do any
act which he is not legally bound to do, or to omit to do any
act which that person is legally entitled to do, as the means of
avoiding the execution of such threat, commits criminal
intimidation

Explanation—A threat to injure the reputation of any
deceased person in whom the person threatened is interested,
is within this section

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil
suit, threatens to burn B's house. A is guilty of criminal intimidation

Intentional
insult with
intent to
provoke
breach of the
peace.

504. Whoever intentionally insults, and thereby gives
provocation to any person, intending or knowing it to be
likely that such provocation will cause him to break the
public peace or to commit any other offence, shall be
punished with imprisonment of either description for a term
which may extend to two years, or with fine, or with both

Statements
conducting to
public mischief.

505. Whoever makes, publishes or circulates any state-
ment rumour or report,—

(a) with intent to cause, or which is likely to cause, any
officer, soldier, sailor or airman in the army, Navy
or Air Force of Her Majesty or in the Royal
Indian Marine or in the Imperial Service Troops
to mutiny or otherwise disregard or fail in his
duty as such; or

(b) with intent to cause, or which is likely to cause, fear
or alarm to the public or to any section of the
public whereby any person may be induced to

or respect, commit an offence against the State or against the appears public tranquility, or

with intent to incite, or which is likely to incite, in any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years or with fine, or with both

Exception—It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for criminal intimidation.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both

If threat be to cause death or grievous hurt, etc

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section

Criminal intimidation by an anonymous communication.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do,

Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or utters any word, makes any sound or gesture, or

Word, gesture or act intended

good of person to whom conveyed or for public good.

Punishment for defamation.

Printing or engraving matter known to be defamatory.

Sale of printed or engraved substance containing defamatory matter.

such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both.

CHAPTER XXII

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Intentional insult with intent to provoke breach of the peace.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Statements conducing to public mischief.

505. Whoever makes, publishes or circulates any statement, rumour or report,—

- (a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the army, Navy or Air Force of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such; or
- (b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to

or respect; commit an offence against the State or against the appearance of public tranquillity, or

F, with intent to incite or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years or with fine, or with both

Exception—It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for criminal intimidation.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

If threat be to cause death or grievous hurt, etc.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section

Criminal intimidation by an anonymous communication.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do,

Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Illustrations

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section

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Sale of printed
or engraved
substance
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such caution he intended for the good of the person . . . it is conveyed, or of some person in whom that pe. . . tend . . . 13

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both

CHAPTER XXII

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

Criminal
intimidation.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section

Illustration

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation

Intentional
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intent to
provoke
breach of the
peace.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Statements
conducing to
public mischief.

505. Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the army, Navy or Air Force of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to

or respect, commit an offence against the State or against the public tranquility; or

F. With intent to incite, or which is likely to incite,
in any class or community of persons to commit an
offense against any other class or community.

shall be punished with imprisonment which may extend to five years, or with fine, or with both.

Exception—It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement has reasonable grounds for believing that such statement, report or report is true and makes, publishes or circulates it without any such intent as aforesaid.

506. Whoever commits the offence of criminal int-... for a term which may extend to two years, or with fine... with both.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or to cause imprisonment for a term which may extend to seven years, or to impute unchastity to a woman shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section

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by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(e) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure A has committed the offence defined in this section

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good of person to whom conveyed or for public good.

Punishment for defamation.

Printing or engraving matter known to be defamatory.

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501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both

CHAPTER XXII

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

Criminal intimidation

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation

Explanation—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section

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Intentional insult with intent to provoke breach of the peace.

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Statements conducing to public mischief.

505. Whoever makes, publishes or circulates any statement rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the army, Navy or Air Force of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to

or respect; commit an offence against the State or against the appearance of public tranquility, or

F with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment which may extend to two years or with fine, or with both

Exception—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Punishment for criminal intimidation.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both If threat be to cause death or grievous hurt, etc.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section. Criminal intimidation by an anonymous communication.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sets dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or word, gesture

good of person
to whom
conveyed or
for public
good

such caution be intended for the good of the person
it is conveyed, or of some person in whom that person is
interested, or for the public good.

Punishment for
defamation.

500. Whoever defames another shall be punished with
simple imprisonment for a term which may extend to two
years, or with fine, or with both.

Printing or
engraving
matter known
to be
defamatory.

501. Whoever prints or engraves any matter, knowing
or having good reason to believe that such matter is defama-
tory of any person shall be punished with simple imprison-
ment for a term which may extend to two years, or with fine,
or with both

Sale of printed
or engraved
substance
containing
defamatory
matter.

502. Whoever sells or offers for sale any printed or
engraved substance containing defamatory matter, knowing
that it contains such matter, shall be punished with simple
imprisonment for a term which may extend to two years, or
with fine or with both

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

Criminal
intimidation.

503. Whoever threatens another with any injury to his
person, reputation or property, or to the person or reputation
of any one in whom that person is interested, with intent to
cause alarm to that person or to cause that person to do any
act which he is not legally bound to do, or to omit to do any
act which that person is legally entitled to do, as the means of
avoiding the execution of such threat, commits criminal
intimidation

Explanation—A threat to injure the reputation of any
deceased person in whom the person threatened is interested,
is within this section

Illustration

A, for the purpose of inducing B to desist from prosecuting a civil
suit, threatens to burn B's house. A is guilty of criminal intimidation

Intentional
insult with
intent to
provoke
breach of the
peace.

504. Whoever intentionally insults, and thereby gives
provocation to any person, intending or knowing it to be
likely that such provocation will cause him to break the
public peace, or to commit any other offence, shall be
punished with imprisonment of either description for a term
which may extend to two years, or with fine, or with both.

Statements
conducting to
public mischief.

505. Whoever makes, publishes or circulates any state-
ment rumour or report,—

(a) with intent to cause, or which is likely to cause, any
officer, soldier, sailor or airman in the army, Navy
or Air Force of Her Majesty or in the Royal
Indian Marine or in the Imperial Service Troops
to mutiny or otherwise disregard or fail in his
duty as such; or

(b) with intent to cause, or which is likely to cause, fear
or alarm to the public or to any section of the
public whereby any person may be induced to

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

When oral admissions as to contents of documents are relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Admissions in civil cases when relevant.

Explanation.—Nothing in this section shall be taken to exempt any barister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain an advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

Confession to police-officer not to be proved.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Confession by accused whilst in custody of police not to be proved against him.

Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

How much of information received from accused may be proved.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

person making them occupies such position or is subject to such liability

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B

A denies that rent was due from C to B

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B

Admission by
persons
expressly
referred to by
party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration

The question is whether a horse sold by A to B is sound.

A says to B—"Go and ask C. C knows all about it." C's statement is an admission

Proof of
admissions
against persons
making them,
and by or on
their behalf.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases —

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission

Illustrations

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged, but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2)

(c) A is accused of a crime committed by him at Calcutta

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2)

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

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28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

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person making them occupies such position or is subject to such liability.

Illustration.

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A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admission by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration

The question is whether a horse sold by A to B is sound.

A says to B—"Go and ask C. C knows all about it." C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

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Evidence is given to show that the ship was taken out of her proper course.

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He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate, but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to maps or plans made by authority of Government.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

Presumption as to collections of laws and reports of decisions.

and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power of attorney and to have been executed before, " " " " public, or any Court, Judge, " " " " Vice-Consul, or representative of Government of India, was so

Presumption as to powers of attorney.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to certified copies of Foreign judicial records.

2 of 1897: An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897, shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to books, maps and charts.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for trans-

Presumption as to telegraphic message.

The Court shall presume that every document, called not produced after notice to produce, was attested, and executed in the manner required by law.

Presumption as to due execution, etc., of documents not produced.

any document, purporting or proved to be old, is produced from any custody which the particular case considers proper, the Court may signatne and every other part of such purports to be in the handwriting of any is in that person's handwriting, and, in executed or attested, that it was duly

Presumption as to documents thirty years old.

by the officer having the legal¹⁰ original, and upon proof of the custody of the document according to the character of the country. law of the foreign

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine.

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Presumption as to Gazette, newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims.

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate. Presumption as to maps or plans made by authority of Government.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, Presumption as to books printed or published under the authority of the Government of any country.

and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated Presumption as to documents authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records Presumption as to certified copies of judicial records.

An officer who, with respect to any territory or place forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the Indian Clauses Act, 1897, shall for the purposes of this Act be deemed to be a representative of the Government of India in and for the country comprising that territory Political Agent deemed to be a representative of the Government of India.

87. The Court may presume that any book or paper may refer for information on matters of public interest, and that any published map or chart, the contents of which are relevant facts and which is produced for inspection, was written and published by the person at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message, received from a telegraph office to the person to whom it purports to be addressed, corresponds with a message for transmission at the office from which the message is to be sent; but the Court shall not make any presumption to the person by whom such message was delivered on mission.

89. The Court shall presume that every document, when for and not produced after notice to produce, was stamped and executed in the manner required by law.

90. Where any document, purporting or appearing to be thirty years old, is produced from any custody, the Court in the particular case considers proper, the Court shall presume that the signature and every other mark on the document, which purports to be in the handwriting of a particular person, is in that person's handwriting, in the case of a document executed or attested, the

executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagor. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contract, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbatim on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(c) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

§ 2. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

Exclusion of evidence of oral agreement.

Proviso (1)—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2)—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3)—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property may be proved.

Proviso (4)—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5)—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved.

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6)—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as the provision was inserted in it by mistake. A may prove that such mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs 500" B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—"Rooms Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(a) A agrees, in writing, to sell a horse to B for Rs 1,000 or Rs 1,500.

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of documents to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah of which B had been in possession since the execution of the deed. These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(a) A agrees to sell to F, for Rs 1,000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarābād. Evidence may be given of facts showing whether Haidarābād in the Dekkhan or Haidarābād in Sind was meant.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies.

Illustration

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Evidence as to meaning of illegible characters, etc

Illustration.

A, a sculptor, agrees to sell to B, "all my models." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement varying terms of document

Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement, that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

Saving of provisions of Indian Succession Act relating to wills.

PART III.

Production and effect of evidence.

CHAPTER VII.

OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Burden of Proof.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as the provision was inserted in it by mistake. A may prove that such mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs 500" B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—"Rooms Rs 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(a) A agrees, in writing, to sell a horse to B for Rs 1,000 or Rs 1,500. Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of documents to existing facts.

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Illustration

A sells to B, by deed, "my estate at Rampur containing 100 bighás." A has an estate at Rampur containing 100 bighás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

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A had no house in Calcutta, but it appears that he had a house at Howrah of which B had been in possession since the execution of the deed. These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations

(a) A agrees to sell to B, for Re 1,000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(7) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad is the Dabban or Haidarabad in Sark was meant.

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Evidence as to application of language to one or two sets of facts to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X but not in the occupation of Y, and he has land in the occupation of Y but is not at X. Evidence may be given of facts showing which he means to sell.

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Illustration.

A and B agree to sell to C, 'all my mids.' A has both models and modelus mids. Evidence may be given to show which he means to sell.

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Who may give evidence of agreement varying terms of document.

Illustration.

A and B make a contract in writing that B shall sell A certain contents to be paid for on delivery. At the same time they make an oral agreement that the contents shall be given to C. This could not be shown as between A and B, but it might be shown by C, if it affected his interest.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1839) as to the construction of wills.

Saving of provisions of Indian Succession Act, 1839.

PART III.

Production and effect of evidence.

CHAPTER VII.

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When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(1) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(2) A desires a Court to give judgment that he is entitled to certain land by the possession of which he claims a right which he asserts, and which it is said to be true.

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(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as the provision was inserted in it by mistake. A may prove that such mistake was made as would by law entitle him to have the contract reformed.

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(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

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(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by
party to his
own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching
credit of
witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:—

- (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
- (2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
- (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
- (4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

(a) A sues B for the price of goods sold and delivered to B, C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Questions
tending to
corroborate
evidence of
relevant fact
admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former state-
ments of
witness may,
be proved to.

157. In order to corroborate the testimony of a witness any former statement made by such witness relating to the same fact at or about the time when the fact took place, or

before any authority legally competent to investigate the fact, may be proved corroborate later testimony as to same fact

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had deposed upon cross-examination the truth of the matter suggested. What matters may be proved in connection with proved statement relevant under section 32 or 33

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. Refreshing memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document he may, with the permission of the Court, refer to a copy of such document. When witness may use copy of document to refresh memory.

Provided the Court be satisfied that there is sufficient reason for the non-production of the original

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document. Testimony to facts stated in document mentioned in section 159.

Illustration

A book keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon. Right of adverse party as to writing used to refresh memory.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. Production of documents.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code. Translation of documents.

163. When a party calls for a document which he has given to the other party notice to produce, and such document is not given, the other party may, if he can, prove the contents of the document by other evidence. Giving as evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Questioned by
party to his
own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

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- (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
- (2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
- (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
- (4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

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The evidence is admissible.

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157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact or about the time when the fact took place, or

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158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document he may, with the permission of the Court, refer to a copy of such document.

Provided the Court be satisfied that there is sufficient reason for the reproduction of the original.

An expert may refresh his memory by reference to published treatises.

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Production

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document called is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using, as evidence, of document produced of which was refused on notice

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the document were called for by the adverse party, nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149, nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

No new trial for improper admission or rejection of evidence if

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

ACT No. IV of 1888.

The Indian Reserve Forces Act, 1888.

An Act to regulate Her Majesty's Indian Reserve Forces.

WHEREAS it is expedient to provide for the government, discipline and regulation of Her Majesty's Indian Reserve Forces, It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Reserve Forces Act, 1888, and

Title and commencement

(2) It shall come into force on such day as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf.

2. The Indian Reserve Forces shall consist of the Active Reserve and the Garrison Reserve.

Division of Reserve Forces into Active and Garrison Reserves.

3. (1) A person belonging to the Active Reserve shall be liable to serve beyond the limits of British India as well as within those limits

Locality of service of Reserves.

(2) A person belonging to the Garrison Reserve shall not be liable without his consent to serve beyond the limits of British India.

4. The Governor General in Council may make rules and orders for the government, discipline and regulation of the Indian Reserve Forces

Power to make rules for regulation of Reserve Forces.

5. Subject to the provision of section 3 with respect to persons belonging to the Garrison Reserve, and to such rules and orders as may be made under section 4, a person belonging to the Indian Reserve Forces shall, as an officer or soldier, as the case may be, be subject to military law in the same manner and to the same extent as a person belonging to Her Majesty's Indian Forces

Liability of Reserve Forces to military law.

6. (1) If a person belonging to the Indian Reserve Forces—

Punishment of certain offences by persons belonging to Reserve Forces

(a) when required by or in pursuance of any rule or order under this Act to attend at any place fails without reasonable excuse to attend in accordance with such requirement, or

(b) fails without reasonable excuse to comply with any such rule or order, or

(c) fraudulently obtains any pay or other sum contrary to any such rule or order,

he shall be liable—

(i) on conviction by a Court-martial, to such punishment other than death, transportation or imprisonment for a term exceeding one year as such Court is by the Indian Articles of War empowered to award, or

- (ii) on conviction by a Magistrate of the first class, to imprisonment for a term which may extend, in the case of a first offence under this section, to six months, and, in the case of any subsequent offence thereunder, to one year.

(2) Where a person belonging to the Indian Reserve Forces is required by or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf, and stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

(3) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other, or be transferred from one description of custody to the other.

7. Nothing in this Act or in any rule or order thereunder shall make any person transferred to the Indian Reserve Forces before the commencement of this Act subject, without his consent, to any of the provisions of this Act

Effect of Act
on persons
already in
the Reserves.

RULES (1925) UNDER THE INDIAN RESERVE FORCES ACT, 1898.

The following rules and orders have been made by the Governor General in Council for the government, discipline and regulation of the Indian Reserve Forces under section 4 of the Indian Reserve Forces Act, 1898 —

1. These rules and orders may be called the Indian Reserve Forces Rules, 1925.

2. In these rules and orders "Commanding Officer" means, the officer in command of a reserve centre or of the corps or portion of a corps to which a reservist is attached for training or muster

Provided that in the case of a reservist of the Indian Hospital Corps, who is attached for training or muster to a unit of his corps, other than the unit to which he belongs, his Commanding Officer will be:—

(a) When the reservist is not called up for training, or muster, the Commanding Officer of the unit to which he actually belongs

(b) When the reservist is called up for training, or muster, the Commanding Officer of the unit to which he is attached for such training, or muster

3. The reserve shall consist of —

(a) Indian Officers commissioned under Rule 4.

(b) Persons enrolled under the Indian Army Act, 1911, and transferred to the Reserve either with their own consent or in pursuance of the conditions of their enrolment

(c) Persons enrolled under the said Act for Service in the reserve.

4. (a) Commissions as Risaldars or Jemadars in the Reserve of the Indian Army Service Corps may be granted to gentlemen of influence who being not more than 30 years of age, are pronounced medically fit for service.

(b) Such Indian officers will ordinarily be retired on attaining 45 years of age.

(c) When called out for army service such Indian officers will, for the purposes of pay and allowances, be on the same footing as Indian officers of the Indian Army of corresponding rank, and holding similar appointments in the Indian Army Service Corps. For the purposes of wound, injury and family pensions or gratuities they will be under the same rules as the corresponding ranks in the Indian Army.

(d) Indian Officers of the Reserve will rank among themselves according to the dates of their commissions and, when employed on army service, will rank with Indian officers of corresponding rank in the Indian Army, but as juniors of each rank. Indian officers commissioned under clause (a) will exercise no military command except over persons belonging or attached to the Indian Army Service Corps

(e) Commissions already granted under the provisions of Military Department Notification No 112, dated the 10th

- (ii) on conviction by a Magistrate of the first class, to imprisonment for a term which may extend, in the case of a first offence under this section, to six months, and, in the case of any subsequent offence thereunder, to one year.

(2) Where a person belonging to the Indian Reserve Forces is required by or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf, and stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

(3) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other, or be transferred from one description of custody to the other.

7. Nothing in this Act or in any rule or order thereunder shall make any person transferred to the Indian Reserve Forces before the commencement of this Act subject, without his consent, to any of the provisions of this Act

Effect of Act
on persons
already in
the Reserves.

RULES (1925) UNDER THE INDIAN RESERVE FORCES ACT, 1885.

The following rules and orders have been made by the Governor General in Council for the government, discipline and regulation of the Indian Reserve Forces under section 1 of the Indian Reserve Forces Act, 1885. —

1. These rules and orders may be called the Indian Reserve Forces Rules, 1925

2. In these rules and orders "Commanding Officer" means, the officer in command of a reserve centre or of a corps or portion of a corps to which a reservist is attached for training or muster

Provided that in the case of a reservist of the Hospital Corps, who is attached for training or muster to a unit of his corps, other than the unit to which he is attached, his Commanding Officer will be —

(a) When the reservist is not called up for training or muster, the Commanding Officer of the unit to which he actually belongs.

(b) When the reservist is called up for training, or muster, the Commanding Officer of the unit to which he is attached for such training, or muster.

3. The reserve shall consist of. —

(a) Indian Officers commissioned under Rule 4

(b) Persons enrolled under the Indian Army Act, 1911, and transferred to the Reserve either with their own consent or in pursuance of the conditions of their enrolment.

(c) Persons enrolled under the said Act for Service in the reserve.

4. (a) Commissions as Risaldars or Jemadars in the Reserve of the Indian Army Service Corps may be granted to gentlemen of influence who being not more than 30 years of age, are pronounced medically fit for service

(b) Such Indian officers will ordinarily be retired on attaining 45 years of age

(c) When called out for army service such Indian officers will, for the purposes of pay and allowances, be on the same footing as Indian officers of the Indian Army of corresponding rank, and holding similar appointments in the Indian Army Service Corps. For the purposes of wound, injury and family pensions or gratuities they will be under the same rules as the corresponding ranks in the Indian Army.

(d) Indian Officers of the Reserve will rank among themselves according to the dates of their commissions and, when employed on army service, will rank with Indian officers of corresponding rank in the Indian Army, but as juniors of each rank. Indian officers commissioned under clause (a) will exercise no military command except over persons belonging or attached to the Indian Army Service Corps

(e) Commissions already granted under the provisions of Military Department Notification No. 112, dated the 10th



ACT V OF 1898.

The Code of Criminal Procedure, 1898.

1.—Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code¹ for the time being in force, there shall be five classes of Criminal Courts in British India, namely:—

Classes of Criminal Courts.

I.—Courts of Session:

II.—Presidency Magistrates:

III.—Magistrates of the first class:

IV.—Magistrates of the second class:

V.—Magistrates of the third class.

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly,² or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Unlawful assembly to disperse on command of Magistrate or police-officer.

(2) This section applies also to the police in the town of Calcutta

128. If upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any mala person, not being an officer or soldier in Her Majesty's Army³ or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of civil force to disperse.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

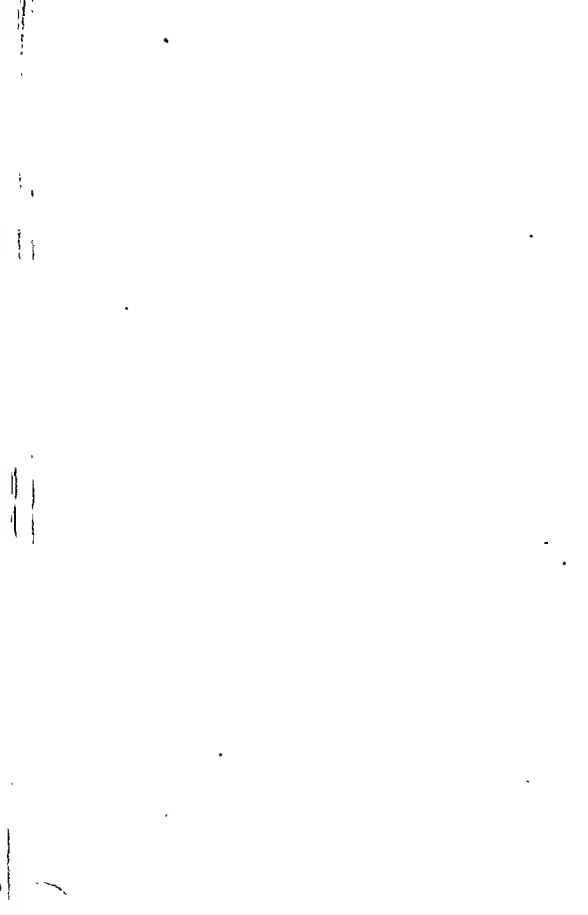
130. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army³ or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Duty of officer commanding troops required by Magistrate to disperse assembly.

¹ See *Cr. P. C.* section 14.

² See *Cr. P. C.* section 14, for definition of an unlawful assembly.

³ Army includes auxiliary and Territorial Forces. (See Sections 22 and 23 of the respective Acts.)



(2)

(3)

(4)

(5) Where a complaint has been made under sub-section (1), clause (a) by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property or criminal breach of trust or cheating.

(b) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence although it cannot be proved which of these contradictory statements was false.

237. (1) If in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

¹ Sections 237 and 238 are applicable to trials by Court-martial on charges under sections 41 and 42 of the I. A. A. See I. A. A., section 85 (4).

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Power of commissioned military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army¹ may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this Chapter.

132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the local Government; and—

- (a) no Magistrate or police officer acting under this Chapter in good faith,
- (b) no officer acting under section 131 in good faith,
- (c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and
- (d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence:

Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier in His Majesty's Army except with the sanction of the Governor General in Council.

195. (1) No court shall take cognizance—

Prosecution for contempt of lawful authority of public servants.

- (a) of any offence punishable under sections 172 to 183 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate,

Prosecution for certain offences against public justice

- (b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 223, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

(c)

¹ Army includes auxiliary and Territorial Forces (See Sections 32 and 15 of the respective Acts)

(2)

(3)

(4)

(5) Where a complaint has been made under sub-section (1), clause (a) by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences. Where it is doubtful what offence has been committed,

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

237. (1) If, in the case mentioned in section 230, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it. When a person is charged with one offence he can be convicted of another.

Illustration

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved he may be convicted of the minor offence, though he was not charged with it. When offence proved included in offence charged

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(2.1) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

¹ Sections 237 and 238 are applicable to trials by Court-martial on charges under sections 41 and 42 of the I. A. A. See I. A. A. section 50.

(5) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(a) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

XLV of

(b) A is charged, under section 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

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476. (1) Procedure in cases mentioned in section 195.—When any Civil, Revenue or Criminal¹ Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in section 195,² sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary enquiry, if any, as it thinks necessary record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court and shall forward the same to Magistrate of the first class having jurisdiction and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate:

Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

¹ A Court martial is a Criminal Court. See section 6.

² For the relevant portion of section 195 see preceding page.

ACT No. II of 1901.

The Indian Tolls (Army or Air Force) Act, 1901.

An Act to amend the law relating to the exemption from tolls of persons and property belonging to the Army.

WHEREAS certain officers, soldiers, airmen and other persons, and certain animals, baggage and carriages belonging or attached to the Army, or to the Air Force are exempted by section 143 of the Army Act or by section 143 of the Air Force Act from payment of certain duties or tolls;

and 145 Vict.,
c. 58.

And
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And whereas it is expedient to remove the inconsistency now existing between the said Army Act and the said enactments and to exempt certain other persons and property belonging to the Army or Air Force from payment of certain tolls;

And whereas it is declared by section 160 of the said Army Act and by section 169 of the said Air Force Act that "it shall be lawful for the Governor General of India . . .

to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor General . . . to be better adapted to the pecuniary means of the inhabitants; and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act," and it is expedient to alter in the manner hereinafter appearing the fine imposed by section 143 of the said Army Act; and by section 143 of the said Air Force Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Tolls (Army) Act, 1901.

Short title,
extent and com-
mencement.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti; and

(3) It shall come into force on the first day of April, 1901.

2. In this Act, unless there is anything repugnant in the subject of context,—

Definitions.

(a) "ferry" includes every bridge and other thing which is a ferry within the meaning of any enactment authorizing the levy of tolls on ferries, but does not include any ferry or other thing which is included in the definition of "railway" in section 3 of the Indian Railways Act, 1890:

IX of 1890.

(b) the expression "His Majesty's Regular Forces" has the meaning assigned to it by section 190, clause

(3) Nothing in this section shall be deemed a conviction of any offence referred to in section 199 when no complaint has been made under that section.

Illustration

(a) A is charged, under section 406, with criminal breach of trust in respect of property. It appears that he did commit a breach of trust in respect of the property, but he was not a carrier. He may be convicted.

(b) A is charged, under section 406, with causing grievous hurt by provocation. He may be convicted.

476. (1)

When any opinion is expressed in an enquiry under section 476, the appellate court may, if it thinks fit, refer the matter to a local authority, and, so far as regards tolls, to a railway company under section 4 of the Indian Guaranteed Railways Act, 1879, or section 51 of the Indian Railways Act, 1890, includes such a railway company and

- "public authority" means the Government or local authority, and, so far as regards tolls, a railway company under section 4 of the Indian Guaranteed Railways Act, 1879, or section 51 of the Indian Railways Act, 1890, includes such a railway company and
- "tolls" includes duties, dues, rates, rents, fees and charges, but do not include customs-duties levied under the Indian Tariff Act, 1894, octroi-duties or town-duties on the import of goods, or fares paid for the conveyance of passengers on a tramway.

3. The following persons and property, namely:—

- (a) all officers, soldiers and airmen of—

(i) His Majesty's Regular Forces, and all officers and soldiers of—

(ii) any local corps, or

(iii) Imperial Service Troops, when on duty or on the march,

- (b) all members of a corps of Volunteers when on duty or when proceeding to or returning from duty,

- (c) all officers and soldiers of the Indian Reserve Forces when proceeding from their place of residence on being called out for training or service or when proceeding back to their place of residence after such training or service,

VIII of 1894

Exempt from tolls

RULES UNDER THE

ACT.

6-1

employed in the service of—
regular forces.

the Troops, or
volunteers,

when,

(g) all prisoners

(h) the horses
employed
exempted
when ac-
companying the
troops

(i) all carriages
or
force
accompanying
such persons
mentioned, or
when returning
persons, be-

(j) all carriages
orders of military
purpose of being
used for air force

(k) all animals accompanying
are intended to be used
for any purpose connected
with such troops, and

(l) all persons in charge of any
animal exempted under any of
the clauses when accompanying the
troops mentioned in those clauses
respectively.

(8), of the Army Act, and includes His Majesty's ^{and the} Regular Air Force as defined by section 190, ^{c. 2} clause (8), of the Air Force Act and also the Indian Reserve Forces when subject to military law:

(c) "horse" includes a mule and any beast of whatever description which is used for burthen or draught or for carrying persons:

(d) the expression "Indian Reserve Forces" means the forces constituted by the Indian Reserve Forces Act, 1888, and includes persons holding commissions in the Indian Army Reserve of Officers when called out in any military capacity. ^{IV of 1888}

(e) "landing-place" includes a pier, wharf, quay, jetty and a stage, whether fixed or floating:

(f) the expression "local corps" means the Hyderabad Contingent, the Central India Horse, the Malwa Bhil Corps, the Bhopal Battalion, the Deoli Irregular Force, the Erinpura Irregular Force, the Meywar Bhil Corps, the Merwara Battalion and the Escort of the Resident in Nepal, and includes any other corps which may be notified by the Governor General in Council in this behalf by order published in the Gazette of India:

(g) "public authority" means the Government or a local authority; and, so far as regards tolls levied by a railway company under section 4 of the Indian Guaranteed Railways Act, 1879, or section 51 of the Indian Railways Act, 1890, includes such a railway company. ^{42 and 43 V c. 61, IX of 1890}

(h) "tolls" includes duties, dues, rates, rents, fees and charges, but do not include customs-duties levied under the Indian Tariff Act, 1894, octroi-duties ^{VIII of 1894} or town-duties on the import of goods, or fares paid for the conveyance of passengers on a tramway.

3. The following persons and property, namely:—

(a) all officers, soldiers and airmen of—

(i) His Majesty's Regular Forces,
and all officers and soldiers of—

(ii) any local corps, or

(iii) Imperial Service Troops,

when on duty or on the march,

(b) all members of a corps of Volunteers when on duty or when proceeding to or returning from duty,

(c) all officers and soldiers of the Indian Reserve Forces when proceeding from their place of residence on being called out for training or service or when proceeding back to their place of residence after such training or service,

(d) all grass-cutters who are employed in the service of—

- (i) His Majesty's Regular Forces,
- (ii) any local corps,
- (iii) Imperial Service Troops, or
- (iv) any corps of Volunteers,

(e) all other authorized followers of—

- (i) His Majesty's Regular Forces,
- (ii) any local corps,
- (iii) Imperial Service Troops, or
- (iv) any corps of Volunteers,

when they accompany any body of such Troops or Volunteers or any such corps on the march, or when otherwise moving under the military or air force authority,

(f) all members of the families of officers, soldier, man or authorized followers of—

- (i) His Majesty's Regular Forces, or
- (ii) any local corps,

when accompanying any body of such officer, soldier or airman or follower thereof on duty or otherwise,

(g) all prisoners under military or air force authority,

(h) the horses and baggage, and the persons employed in carrying the baggage, of the exempted under any of the foregoing when such horses, baggage or persons accompany the persons so exempted under the provisions mentioned in those clauses,

(i) all carriages and horses belonging to or employed in His Majesty's military force service and all persons in attendance accompanying the same, when such persons as hereinbefore in this Act mentioned, or when conveying baggage when returning unladen from such persons, baggage or stores,

(j) all carriages and horses, when in the orders of military or air force service, purpose of being employed in military or air force service,

(k) all animals accompanying any person who are intended to be slaughtered for any purpose connected with the service of such troops, and

(l) all persons in charge of any animal exempted under any of the foregoing clauses when accompanying the same in the circumstances mentioned in those clauses.

- (h) carriages and horses belonging to His Majesty or employed in His Majesty's military service and all persons in charge of or accompanying the same, when conveying any such persons as hereinbefore in this rule mentioned, or when conveying baggage or stores;
- (i) animals accompanying any body or troops which are intended to be slaughtered for food or kept for any purpose connected with the provisioning of such troops; or
- (j) persons in charge of any carriage, horse or animal exempted under any of the foregoing clauses when accompanying the same under the circumstances mentioned in those clauses respectively.

(2) No passes shall be required in the case of officers of His Majesty's Regular Forces or of any local corps or of any Imperial Service Troops, when travelling on duty, though not in uniform;

Provided that the officers so travelling shall furnish in writing to the person authorized to demand toll his name, rank and the nature of the duty on which he is engaged.

3. (1) Save as hereinafter provided in sub-rule (2) every pass shall be signed by the Commanding Officer of the regiment, corps, or detachment concerned, or by a station staff officer.

(2) In the case of members of a corps of volunteers, or of officers and soldiers of the Indian Reserve Forces, every pass shall be signed, in a Presidency-town, by the Commissioner of Police, and, elsewhere, by the District Magistrate, or by such officer as the District Magistrate may authorize in this behalf.

FORM OF PASS.

[Issued under the Indian Tolls (Army) Act, 1901 (II of 1901).]

This pass is issued subject to the rules on the reverse in respect of the persons and property specified in the annexed schedule, and exempt from the payment of tolls on the occasion of—

Embarking or being shipped at _____

Disembarking or being landed at _____

Proceeding from _____ to _____

It will remain in force from _____ up to the _____ 19 ____

Schedule.

	Number.	Name of Corps.	REMARKS.
PART I			
PERSONS.			
Officers			
Soldiers			
Members of Volunteer Corps			
Grass-cutters employed in service of troops or volunteers			
Authorized followers of troops or volunteers			
Members of families of officers, soldiers or authorized followers			
Persons in charge of horses, carriages, slaughter animals and baggage.			
Prisoners			
PART II.			
PROPERTY.			
Horses as defined in the Act *			
Carriages			
Slaughter animals			
Baggage			

* "Horse" includes a mule and any beast of whatever description which is used for burden or draught or for carrying persons. Section 2, clause (c).

(Sd.)

*Commanding Officer of
Station Staff Officer at
District Magistrate at
Officer authorized by District Magistrate at
Commissioner of Police at*

Place_____.

Date_____

Endorsement.

[Here enter rules 1 to 3.]

or at any time during a period of six months thereafter,—

- (i) serving out of India,
- (ii) under orders to proceed on field service,
- (iii) serving with any unit which is for the time being mobilised, or
- (iv) serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding, or when he is or has been at any other time serving under conditions service under which has been declared by the Governor General in Council by notification in the Gazette of India to be service under war conditions; and
- (c) overseas—in relation to any place in British India, other than Aden, when he is or has been serving in Aden or in any place outside India (other than Ceylon) the journey between which and British India is ordinarily undertaken wholly or in part by sea, and, in relation to Aden, when he is or has been serving in any place other than Aden.

Particulars to be furnished in plaints, applications or appeals to Court.

4. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is an Indian soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal.

Power of Collector to intervene in case of unrepresented Indian soldier.

5. If any Collector has reason to believe that any Indian soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Collector may certify the facts in the prescribed manner to the Court.

Notice to be given in case of unrepresented Indian soldier.

6. If a Collector has certified under section 5, or if the Court has reason to believe, that an Indian soldier, who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority:

Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

- (a) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of pre-emption, or
- (b) the interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

NOTE.—The prescribed authority for the purposes of this section is—
In the case of personnel of Inland Water Transport—The Director, Royal Indian Marine, Bombay.

In all other cases—The Officer Commanding the unit or the depot of the unit to which the soldier belongs, care of:—

The General Officer Commanding-in-Chief, Northern Command.

As regards courts in the Punjab and North-West Frontier Province (including Waziristan).

The General Officer Commanding-in-Chief, Southern Command.

As regards courts in the Bombay Presidency, South of the Narbada river, the Madras Presidency, the Central Provinces and Coorg.

The General Officer Commanding-in-Chief, Eastern Command.

As regards courts in the United Provinces and the Provinces of Bihar and Orissa, Bengal and Assam.

The General Officer Commanding-in-Chief, Western Command.

As regards courts in the Bombay Presidency, North of the Narbada river and Ajmere-Merwara.

The General Officer Commanding, Burma District.

As regards courts in Burma

See also notes to sections 13 and 15.

7. If, on receipt of a notice under section 6 the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

Postponement of Proceeding

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case of a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

Court may proceed without certificate received.

9. When any document purporting to be signed by the Commanding Officer of an Indian soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier—

Postponement of proceeding against Indian soldier on leave

- (a) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or
- (b) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to section 6, and shall, in any other case, be postponed in the manner provided in section 7.

10. (1) In any proceeding before a Court in which a decree or order has been passed against any Indian soldier whilst he was serving under war conditions or at any time after the 1st day of April, 1925, whilst he was serving under any

Power to set aside decree and orders passed against Indian soldier

or at any time during a period of six months thereafter,—

- (i) serving out of India,
 - (ii) under orders to proceed on field service,
 - (iii) serving with any unit which is for the time being mobilised, or
 - (iv) serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding, or when he is or has been at any other time serving under conditions service under which has been declared by the Governor General in Council by notification in the Gazette of India to be service under war conditions; and
- (c) overseas—in relation to any place in British India, other than Aden, when he is or has been serving in Aden or in any place outside India (other than Ceylon) the journey between which and British India is ordinarily undertaken wholly or in part by sea, and, in relation to Aden, when he is or has been serving in any place other than Aden.

Particulars to be furnished in plaints, applications or appeals to Court.

4. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is an Indian soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal.

Power of Collector to intervene in case of unrepresented Indian soldier.

5. If any Collector has reason to believe that any Indian soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Collector may certify the facts in the prescribed manner to the Court.

Notice to be given in case of unrepresented Indian soldier.

6. If a Collector has certified under section 5, or if the Court has reason to believe, that an Indian soldier, who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority:

Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

- (a) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of pre-emption, or
- (b) the interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

NOTE.—The prescribed authority for the purposes of this section is—
In the case of personnel of Inland Water Transport—The Director, Royal Indian Marine, Bombay.

In all other cases—The Officer Commanding the unit or the Depot of the unit to which the soldier belongs, care of:—

The General Officer Commanding-in-Chief, Northern Command.

As regards courts in the Punjab and North-West Frontier Province (including Waziristan).

The General Officer Commanding-in-Chief, Southern Command.

As regards courts in the Bombay Presidency, South of the Narmada river, the Madras Presidency, the Central Provinces and Coorg.

The General Officer Commanding-in-Chief, Eastern Command.

As regards courts in the United Provinces and the Provinces of Bihar and Orissa, Bengal and Assam.

The General Officer Commanding-in-Chief, Western Command.

As regards courts in the Bombay Presidency, North of the Narmada river and Ajmere-Merwara.

The General Officer Commanding, Burma District.

As regards courts in Burma.

See also notes to sections 13 and 15.

7. If, on receipt of a notice under section 6 the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case of a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

Court may proceed where no certificate received.

9. When any document purporting to be signed by the Commanding Officer of an Indian soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier—

Postponement of proceeding against Indian soldier on leave

- (a) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or
- (b) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to section 6, and shall, in any other case, be postponed in the manner provided in section 7.

10. (1) In any proceeding before a Court in which a decree or order has been passed against any Indian soldier whilst he was serving under war conditions or at any time after the 1st day of April, 1925, whilst he was serving under any

power to set aside decree and order passed against Indian soldier

9. In rule 163, clause (A) for the words "The Governor General in Council" the words "The Agent to the Governor General in Rajputana" shall be substituted.

10. In the third appendix, Forms Nos. 1 and 2 and the form for assembly and proceedings of a Summary General Court Martial, shall be omitted, and the "Forms of proceedings of Courts Martial" shall be subject to such variations as circumstances may require.

(Foreign Department Notifications Nos. 2532-58-Int., 2533-58-Int., and 2534-58-Int., dated 15th November 1922, in respect of the Mina Corps.)

No. 2532-58-Int.—In exercise of the power conferred by sub-section (1) of section 5 of the Indian Army Act, 1911 (VIII of 1911), the Governor General in Council is pleased to apply to the Mina Corps the provisions of the said Act with the exception of clause (A) of sub-section (1) of section 6, sub-section (2) of section 12 (so far as it relates to general service), sections 18, 23 and 24, clause (C) of section 28, sub-section (3) of section 53, sections 57, 58, 59, 60, 61, 62 and 63, sections 72 and 74 (so far as they relate to Summary General Courts-Martial) and sections 77, 78, 79, 80, 81, 87, 93, 99-A and 121.

No. 2533-58-Int.—In exercise of the powers conferred by sub-section (2) of section 5 of the Indian Army Act, 1911 (VIII of 1911), as applied to the Mina Corps the Governor General in Council is pleased to direct that the officers and authorities mentioned in the first column of the sub-joined table shall exercise or perform the jurisdiction, powers and duties incident to the operation of the said Act specified in the second column thereof.

The Table.

Officers and Authorities	Powers and Duties.
Governor General in Council	Of a Commander-in-Chief in India
Agent to the Governor General in Rajputana.	Of a General Court-Martial or of an Officer Commanding an Army Corps or a Division.
Political Agent, Haraoti and Tonk.	Of a District Court-Martial or of an Officer Commanding a Brigade.

No. 2534-58-Int.—In exercise of the powers conferred by sub-section (1) of section 113 of the Indian Army Act, 1911 (VIII of 1911), as applied to the Mina Corps, the Governor General in Council is pleased to direct that the Indian Army Act Rules shall, subject to the modifications set forth hereunder, be deemed to be rules made under as so applied:—

(i) For rules 7 and 8 the following rule namely:—

- "7. The Commandant of the Mir enrolling officer for
8. All combatants shall, attested as provi'

(ii) In clause (A) of rule 9 in the "Form of Oath" and the "Form of affirmation" the words "and go wherever I may be ordered by land or sea" shall be omitted.

(iii) In the Table appended to rule 13, for the words "Commander-in-Chief in India" wherever they occur, the words "the Agent to the Governor General in Rajputana" shall be substituted, and the entries relating to the Indian Subordinate Medical Department shall be omitted.

(iv) Clauses (B) (C) and (D) of rule 27, rules 28 to 31 and rule 31 shall be omitted.

(v) In rule 35—

(a) For the first paragraph the following shall be substituted, namely:—

"35. The Court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience," and

(b) in the "Form of Oath" and in the "Form of Affirmation" the words "vote or" and "of any particular member" shall be omitted.

(vi) In rule 38—

(a) For the first 13 words the following words shall be substituted, namely:—

"After the Court is sworn or has made affirmation."

(b) The Forms of oath and of affirmation lettered (A) and (B) shall be omitted, and

(c) in the "Form of Oath" and the "Form of Affirmation" lettered (D) the words "vote or" and "of any particular member" shall be omitted.

(vii) Rules 49 and 50, clause (B) of rule 55, rules 62 to 64, clauses (C) and (D) of rule 70, rules 72 and 73, clause (B) of rule 78, rules 89 to 91, clause (A) of rule 132, rules 137 to 151 and rules 160 to 162 shall be omitted.

(viii) In clause (A) of rule 163, for the words "The Governor General in Council" the words "The Agent to the Governor General in Rajputana" shall be substituted.

(ix) Save as provided in clause (iii) above all references to the Commander-in-Chief in India shall be read as referring to the Governor General in Council, all references to a General Court-martial or to an Officer Commanding an Army Corps or a Division shall be read as referring to the Agent to the Governor General in Rajputana, and all references to a District Court-Martial or to an Officer Commanding a Brigade shall be read as referring to the Political Agent, Haraothi and Tonk.

(x) In the Third Appendix, Forms Nos. 1 and 2 and the "Form for Assembling and Proceedings of a Summary General Court-Martial" shall be omitted, and the "Form of Proceedings of Courts-Martial" shall be subject to such variations as circumstances may require.

9. In rule 163, clause (A) for the words "The Governor General in Council" the words "The Agent to the Governor General in Rajputana" shall be substituted.

10. In the third appendix, Forms Nos. 1 and 2 and the form for assembly and proceedings of a Summary General Court Martial, shall be omitted, and the "Forms of proceedings of Courts Martial" shall be subject to such variations as circumstances may require.

(Foreign Department Notifications Nos. 2332-58-Int., 2333-58-Int., and 2334-58-Int., dated 15th November 1922, in respect of the Mina Corps.)

No. 2332-58-Int.—In exercise of the power conferred by sub-section (1) of section 5 of the Indian Army Act, 1911 (VIII of 1911), the Governor General in Council is pleased to apply to the Mina Corps the provisions of the said Act with the exception of clause (A) of sub-section (1) of section 6, sub-section (2) of section 12 (so far as it relates to general service), sections 18, 23 and 24, clause (C) of section 28, sub-section (5) of section 53, sections 57, 58, 59, 60, 61, 62 and 63, sections 72 and 74 (so far as they relate to Summary General Courts-Martial) and sections 77, 78, 79, 80, 81, 87, 93, 99-A and 121.

No. 2333-58-Int.—In exercise of the powers conferred by sub-section (2) of section 5 of the Indian Army Act, 1911 (VIII of 1911), as applied to the Mina Corps the Governor General in Council is pleased to direct that the officers and authorities mentioned in the first column of the sub-joined table shall exercise or perform the jurisdiction, powers and duties incident to the operation of the said Act specified in the second column thereof.

The Table.

Officers and Authorities.	Powers and Duties.
Governor General in Council . .	Of a Commander-in-Chief in India.
Agent to the Governor General in Rajputana.	Of a General Court-Martial or of an Officer Commanding an Army Corps or a Division.
Political Agent, Harauti and Tonk .	Of a District Court-Martial or of an Officer Commanding a Brigade.

No. 2334-58-Int.—In exercise of the powers conferred by sub-section (1) of section 113 of the Indian Army Act, 1911 (VIII of 1911), as applied to the Mina Corps, the Governor General in Council is pleased to direct that the Indian Army Act Rules shall, subject to the modifications set forth hereunder, be deemed to be rules made under the Act as so applied:—

(i) For rules 7 and 8 the following rules shall be substituted, namely:—

"7. The Commandant of the Mina Corps shall be the enrolling officer for the purposes of the Act.

8. All combatants shall, when reported fit for duty, be attested as provided in section 12 of the Act."

(ii) In clause (A) of rule 9 in the "Form of Oath" and "Form of affirmation" the words "and go wherever I am ordered by land or sea" shall be omitted.

(iii) In the Table appended to rule 13, for the words "Commander in Chief in India" wherever they occur, the words "the Agent to the Governor General in Rajasthan" shall be substituted, and the entries relating to the Indian Maritime Medical Department shall be omitted.

(iv) Clauses (ii), (c) and (d) of rule 27, rules 28 to 31 and 34 shall be omitted.

(v) In rule 35

(a) For the first paragraph the following shall be substituted, namely:—

"35. The Court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience," and

"Swearing or Affirmation of Court"

(b) in the "Form of Oath" and in the "Form of Affirmation" the words "vote or" and "of any particular member" shall be omitted.

(vi) In rule 39

(a) For the first 13 words the following words shall be substituted, namely:—

"After the Court is sworn or has made affirmation,"

(b) The Forms of oath and of affirmation lettered (A) and (B) shall be omitted, and

(c) in the "Form of Oath" and the "Form of Affirmation" lettered (B) the words "vote or" and "of any particular member" shall be omitted.

(vii) Rules 49 and 50, clause (B) of rule 55, rules 62 to 64, rules (C) and (D) of rule 70, rules 72 and 73, clause (B) of rule 74, rules 80 to 91, clause (A) of rule 112, rules 137 to 151 and rules 160 to 162 shall be omitted.

(viii) In clause (A) of rule 163, for the words "The Lieutenant General in Council" the words "The Agent to the Governor General in Rajasthan" shall be substituted.

(ix) Save as provided in clause (ii) above, all references to a Commander-in-Chief in India shall be read as referring to the Governor General in Council, all references to a General or Marshal or to an Officer Commanding an Army Corps or Division shall be read as referring to the Agent to the Governor General in Rajasthan, and all references to a Field Court-Martial or to an Officer Commanding a Brigade shall be read as referring to the District Agent, Harwar and Ak.

(x) In the Third Appendix, Forms Nos. 1 and 2 and the Form for Assembling and Proceedings of a Quarterly General Court-Martial shall be omitted, and the "Form Proceedings of Courts-Martial" shall be subject to such variations as circumstances may require.

9. In rule 163, clause (A) for the words "The Governor General in Council" the words "The Agent to the Governor General in Rajputana" shall be substituted.

10. In the third appendix, Forms Nos. 1 and 2 and the form for assembly and proceedings of a Summary General Court Martial, shall be omitted, and the "Forms of proceedings of Courts Martial" shall be subject to such variations as circumstances may require.

(Foreign Department Notifications Nos. 2332-58-Int., 2333-58-Int., and 2334-58-Int., dated 15th November 1922, in respect of the Mina Corps.)

No. 2332-58-Int.—In exercise of the power conferred by sub-section (1) of section 5 of the Indian Army Act, 1911 (VIII of 1911), the Governor General in Council is pleased to apply to the Mina Corps the provisions of the said Act with the exception of clause (A) of sub-section (1) of section 6, sub-section (2) of section 12 (so far as it relates to general service), sections 18, 23 and 24, clause (C) of section 28, sub-section (3) of section 53, sections 57, 58, 59, 60, 61, 62 and 63, sections 72 and 74 (so far as they relate to Summary General Courts-Martial) and sections 77, 78, 79, 80, 81, 87, 98, 99-A and 121.

No. 2333-58-Int.—In exercise of the powers conferred by sub-section (2) of section 5 of the Indian Army Act, 1911 (VIII of 1911), as applied to the Mina Corps the Governor General in Council is pleased to direct that the officers and authorities mentioned in the first column of the sub-joined table shall exercise or perform the jurisdiction, powers and duties incident to the operation of the said Act specified in the second column thereof.

The Table.

Officers and Authorities	Powers and Duties
Governor General in Council . . .	Of a Commander-in-Chief in India.
Agent to the Governor General in Rajputana.	Of a General Court-Martial or of an Officer Commanding an Army Corps or a Division.
Political Agent, Harassi and Tonk .	Of a District Court-Martial or of an Officer Commanding a Brigade

No 2334-58-Int.—In exercise of the powers conferred by sub-section (1) of section 113 of the Indian Army Act, 1911 (VIII of 1911), as applied to the Mina Corps, the Governor General in Council is pleased to direct that the Indian Army Act Rules shall, subject to the modifications set forth hereunder, be deemed to be rules made under the Act as so applied:—

(i) For rules 7 and 8 the following rules shall be substituted, namely:—

"7. The Commandant of the Mina Corps shall be the enrolling officer for the purposes of the Act.

8. All combatants shall, when reported fit for duty, be attested as provided in section 12 of the Act."

(i) In clause (A) of rule 9 in the "Form of Oath" and the "Form of affirmation" the words "and go wherever I may be ordered by land or sea" shall be *omitted*.

(ii) In the Table appended to rule 13, for the words "Commander-in-Chief in India" wherever they occur, the words "the Agent to the Governor General in Rajputana" shall be *substituted*, and the entries relating to the Indian Subordinate Medical Department shall be *omitted*.

(iv) Clauses (B), (C) and (D) of rule 27, rules 28 to 31 and rule 31 shall be *omitted*.

(v) In rule 35—

(a) For the first paragraph the following shall be *substituted*, namely —

"35. The Court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience," and

Swearing or Affirmation of Court

(b) in the "Form of Oath" and in the "Form of Affirmation" the words "vote or" and "of any particular member" shall be *omitted*.

(vi) In rule 36—

(a) For the first 13 words the following words shall be *substituted*, namely:—

"After the Court is sworn or has made affirmation."

(b) The Forms of oath and of affirmation lettered (A) and (B) shall be *omitted*, and

(c) in the "Form of Oath" and the "Form of Affirmation" lettered (D) the words "vote or" and "of any particular member" shall be *omitted*.

(vii) Rules 49 and 50, clause (B) of rule 55, rules 62 to 64, clauses (C) and (D) of rule 70, rules 72 and 73, clause (B) of rule 78, rules 89 to 91, clause (A) of rule 132, rules 137 to 151 and rules 160 to 162 shall be *omitted*.

(viii) In clause (A) of rule 163, for the words "The Governor General in Council" the words "The Agent to the Governor General in Rajputana" shall be *substituted*.

(ix) Save as provided in clause (ii) above, all references to the Commander-in-Chief in India shall be read as referring to the Governor General in Council, all references to a General Court-Martial or to an Officer Commanding an Army Corps or a Division shall be read as referring to the Agent to the Governor General in Rajputana, and all references to a District Court-Martial or to an Officer Commanding a Brigade shall be read as referring to the Political Agent, Haraoti and Tonk.

(x) In the Third Appendix, Forms Nos. 1 and 2 and the "Form for Assembling and Proceedings of a Summary General Court-Martial" shall be *omitted*, and the "Form of Proceedings of Courts-Martial" shall be subject to such variations as circumstances may require.

9. In rule 163, clause (A) *for* the words "The Governor General in Council" the words "The Agent to the Governor General in Rajputana" shall be substituted.

10. In the third appendix, Forms Nos. 1 and 2 and the form for assembly and proceedings of a Summary General Court Martial, shall be omitted, and the "Forms of proceedings of Courts Martial" shall be subject to such variations as circumstances may require.

(Foreign Department Notifications Nos. 2332-58-Int., 2333-58-Int., and 2334-58-Int., dated 15th November 1922, in respect of the Mina Corps.)

No. 2332-58-Int.—In exercise of the power conferred by sub-section (1) of section 5 of the Indian Army Act, 1911 (VIII of 1911), the Governor General in Council is pleased to apply to the Mina Corps the provisions of the said Act with the exception of clause (A) of sub-section (1) of section 6, sub-section (2) of section 12 (so far as it relates to general service), sections 18, 23 and 24, clause (C) of section 28, sub-section (3) of section 53, sections 57, 58, 59, 60, 61, 62 and 63, sections 72 and 74 (so far as they relate to Summary General Courts-Martial) and sections 77, 78, 79, 80, 81, 87, 93, 99-A and 121.

No. 2333-58-Int.—In exercise of the powers conferred by sub-section (2) of section 5 of the Indian Army Act, 1911 (VIII of 1911), as applied to the Mina Corps the Governor General in Council is pleased to direct that the officers and authorities mentioned in the first column of the sub-joined table shall exercise or perform the jurisdiction, powers and duties incident to the operation of the said Act specified in the second column thereof.

The Table.

Officers and Authorities	Powers and Duties.
Governor General in Council . .	Of a Commander-in-Chief in India.
Agent to the Governor General in Rajputana.	Of a General Court-Martial or of an Officer Commanding an Army Corps or a Division
Political Agent, Haraoth and Tonk .	Of a District Court-Martial or of an Officer Commanding a Brigade

No. 2334-58-Int.—In exercise of the powers conferred by sub-section (1) of section 113 of the Indian Army Act, 1911 (VIII of 1911), as applied to the Mina Corps, the Governor General in Council is pleased to direct that the Indian Army Act Rules shall, subject to the modifications set forth hereunder, be deemed to be rules made under the Act as so applied:—

(1) *For* rules 7 and 8 the following rules shall be substituted, namely:—

"7. The Commandant of the Mina Corps shall be the enrolling officer for the purposes of the Act.

8. All combatants shall, when reported fit for duty, be attested as provided in section 12 of the Act."

(iii) In clause (A) of rule 2 in the "Form of Oath" and the "Form of Affirmation" the words "and go wherever I may be ordered by land or sea" shall be omitted.

(iv) In the Table appended to rule 13, for the words "Commander-in-Chief in India" wherever they occur, the words "the Agent to the Governor General in Rajputana" shall be substituted, and the entries relating to the Indian Subordinate Medical Department shall be omitted.

(v) Clauses (D), (C) and (B) of rule 27, rules 28 to 31 and rule 31 shall be omitted.

(vi) In rule 35 -

(a) For the first paragraph the following shall be substituted, namely -

"35. The Court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience," and

"swearing or Affirmation of Court."

(b) in the "Form of Oath" and in the "Form of Affirmation" the words "vote or" and "of any particular member" shall be omitted.

(vii) In rule 36--

(a) For the first 13 words the following words shall be substituted, namely -

"After the Court is sworn or has made affirmation,"

(b) The Forms of oath and of affirmation lettered (A) and (B) shall be omitted, and

(c) in the "Form of Oath" and the "Form of Affirmation" lettered (D) the words "vote or" and "of any particular member" shall be omitted.

(viii) Rules 4th and 50, clause (B) of rule 55, rules 62 to 64, clauses (C) and (D) of rule 70, rules 72 and 73, clause (B) of rule 78, rules 89 to 91, clause (A) of rule 132, rules 137 to 151 and rules 160 to 162 shall be omitted.

(ix) In clause (A) of rule 163, for the words "The Governor General in Council" the words "The Agent to the Governor General in Rajputana" shall be substituted.

(x) Save as provided in clause (iii) above, all references to the Commander-in-Chief in India shall be read as referring to the Governor General in Council, all references to a General Court-martial or to an Officer Commanding an Army Corps or a Division shall be read as referring to the Agent to the Governor General in Rajputana, and all references to a District Court-Martial or to an Officer Commanding a Brigade shall be read as referring to the Political Agent, Haranoti and Tonk.

(xi) In the Third Appendix, Forms Nos. 1 and 2 and the "Form for Assembling and Proceedings of a Summary General Court-Martial" shall be omitted, and the "Form of Proceedings of Courts-Martial" shall be subject to such variations as circumstances may require.

TABLE.

Class.	Cause of discharge.	Competent authority to authorize discharge.	Special instructions.
Persons who have been both enrolled and attested.	(i) At his own request, on transfer to the pension establishment.	Commanding Officer.	To be carried out in accordance with the conditions of his enrolment and with section 18 of the Act and Rule 10.
	(ii) At his own request, on fulfilling the conditions of his enrolment.	Commanding Officer.	To be carried out in accordance with the conditions of his enrolment and with section 18 of the Act and Rule 10.
	(iii) Having been found medically unfit for further service.	Commanding Officer.	To be carried out only on the recommendation of an invaliding board.
	(iv) Or transfer to the pension establishment on his request, or under item (iii).	Commanding Officer.
	(v) Or transfer to the pension establishment on his request, or under item (iii).	Air Officer Commanding in India.	The Air Officer Commanding in India will exercise this power only when he is satisfied as to the bona fides of the application and when the application discloses the existence of compassionate grounds.
Persons who have been enrolled but not attested.	(vi) His services being no longer required.	Air Officer Commanding in India.
	(vii) On compassionate grounds before fulfilling the conditions of his enrolment.	Air Officer Commanding in India.	The Air Officer Commanding in India will exercise this power only when he is satisfied as to the bona fides of the application and when the application discloses the existence of compassionate grounds.
	(viii) All other classes for discharge.	Commanding Officer.	Recruits who are considered unlikely to become efficient aircraftmen will be dealt with under this item.

7. In rule 136 of the said rules—

(i) In clause (B)—

(a) For the words "Army Act" the words "Army Air Force or Indian Army Act" shall be substituted; and

(b) the word "military" shall be omitted.

(ii) In clause (C), for the words "Army Act" the words "Army, Air Force or Indian Army Act" shall be substituted.

For rule 161, the following shall be substituted, namely —

"161 The Indian Technical and Followers Corps, Royal Air Force, shall be a "corps" for all the purposes of the Act and of these rules."

Explanation — The details of the Indian Technical and Followers Corps, Royal Air Force, attached to any unit of the Royal Air Force, shall, for the purposes of the Act and of these rules be deemed to be a detachment of the corps as constituted by this rule.

9 For the First Appendix to the said rules, the following shall be substituted, namely, —

"FIRST APPENDIX."

FORM OF ENROLMENT—ALL CLASSES.

The prescribed periods for which persons shall be enrolled are stated in the appropriate orders of the Government of India, and save as is hereinafter provided, no person shall, by reason of an error in his enrolment paper or otherwise, be compelled to serve for a period longer than that for which he should have been enrolled though he may do so voluntarily, provided his services are required.

Enrolment of

No. _____ Name _____
as a _____ in the Indian Technical and Followers Corps, Royal Air Force.

Questions to be put before Enrolment.

You are warned that, if after enrolment, it is found that you have given a wilfully false answer to any of the following eight questions you will be liable to be punished as provided in the Indian Army Act, as applied to the Indian Technical and Followers Corps, Royal Air Force.

1. What is your name? . . . 1.
2. What is your father's name? 2.
3. What is your religion, class 3.
and tribe?

4. What is your Village, Thana,
Pergunnah and District? .

{ Village
Thana
Pergunnah
Tehsil
District

5. Have you ever been imprisoned 5.
by the Civil Power?
6. Do you now belong to His 6.
Majesty's Forces, the Reserve, or the Forces of any Indian State, or the Nepal State Army?

ATTESTATION.

Certified that the abovenamed person took the prescribed
^{oath}
^{affirmation} before me at this day of 19 .

Signature of Attesting Officer.

EXTENSION OF COLOUR SERVICE IN LIEU OF
TRANSFER TO THE RESERVE.

- (1) *For use when a person extends his Colour Service for the whole period of his enrolment.*

I agree to extend my Colour Service for the whole period of my enrolment instead of being transferred to the Reserve.

Signature.

Signed in my presence at this day of 19 .

Signature of O. O.

- (2) *For use when a person extends his Colour Service for a limited period with liability to serve in the Reserve for the remainder of his period of enrolment.*

I agree to extend my Colour Service for years with liability to transfer to the Reserve until I have completed the total period of service for which I am liable under this enrolment.

Signature.

Signed in my presence at this day of 19 .

Signature of O. O.

NOTE—A person may extend his Colour Service on this form as often as may be permitted until he is no longer liable to serve in the Reserve.

TRANSFER TO THE RESERVE.

THE FORM WHICH IS NOT APPLICABLE IS TO BE STRUCK OUT.

- (1) *For use when the transfer is in accordance with the conditions of the person's enrolment.*

Name _____ was transferred to the Reserve from
 (date) _____

Strike out the line which is not applicable. { He was not given the option of extending his Colour Service.
 or
 He was given the option of extending his Colour Service, but elected not to exercise it.

Signed at this day of 19 .

Signature of O. O.

NOTIFICATIONS AND WARRANTS UNDER I. A. A.

- (2) For use when a person is transferred with his own consent in accordance with the regulations for the time being in force of the Government of India.

I consent to the conditions as to discharge accepted by me on my enrolment being cancelled from the date of my transfer to the Reserve and the following being substituted for them.

I will be entitled to receive my discharge at any time unless war is imminent or existing, provided that, if I am discharged at my own request before having served two years in the Reserve exclusive of any portion of the period of my enrolment, I will, before being so discharged, refund the amount expended on my passage consequent on my transfer to the Reserve.

I am aware that I am liable to be discharged at any time, should His Majesty no longer require my services.

Signed in my presence at this day of 10 .
Signature.
Signature of C. O.

TRANSFER TO COLOUR SERVICE FROM THE RESERVE.

THE SET OF CONDITIONS WHICH IS NOT APPLICABLE IS TO BE STRUCK OUT.

- (1) For use when the person was originally enrolled for both Colour Service and Reserve Service.

On being transferred to Colour Service at my own request for a period of years I declare that I understand that all conditions accepted by me on my enrolment are still applicable, so far as they can be applied, and that, subject to any right I may have of extending this period of Colour Service, I am liable on completion thereof, or of any period of extension thereof, to be retransferred to the Reserve for the remainder, if any, of the total period of my enrolment; but have no right to be so retransferred, and am liable to be discharged at any time, should His Majesty no longer require my services.

Signed in my presence at this day of 10 .
Signature.
Signature of C. O.

- (2) For use when the person was originally enrolled for Colour Service only, or direct into the Reserve.

On being transferred to Colour Service from the Reserve, I consent to the conditions as to discharge accepted by me on my transfer to the Reserve being cancelled and the following substituted for them:—

When I have served years from this date, I will be entitled to receive my discharge within three months from the date of applying for it unless war is imminent or existing, provided that, in the event of my deserting, service between

(Home Department Notification No. 1833, dated 27th September 1912.)

In pursuance of section 3, sub-section (1) of the Indian Army Act, 1911 (VIII of 1911), and in continuation of the orders contained in Notification No. 475 (Judicial), dated the 17th May 1912, by the Government of India in the Army Department, the Governor General in Council is pleased to direct that the following officers shall, when subject to section (1), clause (c), there warrant officers or non-com

I.—As Native Officers.

- (i) Tabsildars;
- (ii) Sub-deputy Collectors;
- (iii) Deputy Tahsildars and Sub-Magistrates;
- (iv) Myooks;
- (v) Munsifs;
- (vi) Township officers;
- (vii) Civil Sub-Assistant Surgeons of the "Senior" grade, first and second classes; and
- (viii) Inspectors of Police.

II.—As Warrant Officers.

- (i) Civil Sub-Assistant Surgeons of the 1st, 2nd, 3rd and 4th grades;
- (ii) Sub-Inspectors of Police;
- (iii) Sheristadar Magistrates; and
- (iv) Clerks drawing a salary of Rs. 50 per mensem and upwards.

III.—As non-commissioned officers.

- (i) Compounders;
- (ii) Head Constables of Police;
- (iii) Revenue and Judicial officers other than those shown in clause I;
- (iv) Clerks drawing salaries of less than Rs. 50 but not less than Rs. 16 a month.

Notes

Native Officers—Those persons formerly known as "Native Officers" are now designated "Indian Officers." See section 2 of the Indian Army (Amendment) Act, 1913. The above notifications should be construed accordingly. Relative rank has been granted to certain civilians as shown in the following table.



NO. V.—OFFICERS TO EXERCISE POWERS IN CASE OF FOREIGN SERVICE.

(Army Department Notification No. 274, dated the 20th February 1925.)

No. 274.—In exercise of the powers conferred by section 6 of the Indian Army Act, 1911 (VIII of 1911), and in supersession of rule 160 of the Indian Army Act Rules and of the Notification of the Government of India in the Army Department No. 2803, dated the 5th September 1919, and of all notifications, amending the same, the Governor General in Council is pleased to prescribe the officers specified in the first column of the annexed table as the officers by whom the powers specified in the corresponding entry in the second column thereof shall be exercised as regards persons subject to the said Act who are serving under the command of the said officers:—

THE TABLE.

Officers.	Powers
The Officer Commanding the British Forces in Iraq	The powers which under the said Act may be exercised by an officer commanding a division
The Officer Commanding the Troops, South China Commands	
The Officer Commanding in Malaya	
The Officer Commanding the Forces at Aden.	The powers which under the said Act may be exercised by an officer commanding a brigade.
The Officer in immediate command of the Military Forces in Iraq	

Provided that if any warrant officer or attested person is dismissed or if his discharge is authorised by any of the aforesaid officers, his dismissal or discharge shall not take effect until it has been approved by the Governor General in Council or by the Commander-in-Chief in India.

NOTES—The proviso to this notification only relates to summary dismissal under section 14 of the Act and to discharge under section 15 of the Act and Rule 13. It does not limit the powers of the officers mentioned to confirm (within the terms of any warrants they may hold) court-martial sentences of dismissal which will take effect as provided in rule 154 (A). See also the notes to that rule.

In cases falling under the proviso to this notification the application for the dismissal or discharge of a person, I. A. F. Y-1948, should be endorsed in the manner provided for in R. A. I., paragraph 163, and be forwarded to the Adjutant General in India. It should not be forwarded until the person is despatched to India. The order endorsed on I. A. F. Y-1948 must not specify any future date as the date from which the dismissal or discharge is to take effect. In the case of a person dismissed on account of having been sentenced to transportation or to imprisonment which is carried out in a civil prison, the person having been relieved from duty, the dismissal will take effect from the date of approval; and in order to avoid the approval being given before the person is committed to a civil prison in India the I. A. F. Y-1948 should, if possible, be despatched at the same time as, but not before, the person is despatched there. In other cases, unless the person is to be (Act), he should be sent to the Y-1948 should be sent simultaneously requested to communicate with the Depot, who should thereupon

Care must be taken that person dismissed transportation or it should

C-2.

Warrant for convening and confirming District Courts-Martial under the Indian Army Act.

To

THE OFFICER, NOT BEING UNDER THE RANK OF A FIELD OFFICER, COMMANDING AT*

Whereas I have power to convene General Courts-Martial under the Indian Army Act, and whereas under that Act, any Officer having power to convene General Courts-Martial may empower any Officer to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Indian Military Law.

By virtue of the said Act I do hereby empower you, or the Officer on whom your command may devolve during your absence; not under the rank of Field Officer, from time to time, as occasion may require, to convene District Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command, who is subject to Indian Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

And I do hereby empower you, or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer, to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act in the confirming Officer, in such manner as may be best for the good of His Majesty's Service:

Provided always, that in the case of any District Court-Martial held for the trial of a Warrant Officer, as also in the case of any other District Court-Martial in which you shall think fit so to do, you shall withhold confirmation and transmit the proceedings to ^{me,} the Officer Commanding the Brigade.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at this day of
19 . . .

*(Signature of Officer having power
to convene General Courts-Martial.)*

(Signature of Staff Officer.)

* This warrant is issued to officers commanding at important stations, by the officer commanding the district concerned.

D-2.

Warrant for convening District Courts-Martial under the
Indian Army Act.

To

THE OFFICER, NOT BEING UNDER THE RANK OF A
CAPTAIN COMMANDING AT*

Whereas I have power to convene General Courts-Martial under the Indian Army Act, and whereas under that Act, any Officer having power to convene General Courts-Martial may empower any Officer to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Indian Military Law,

By virtue of the said Act I do hereby empower you, or the Officer on whom your command may devolve during your absence, not under the rank of Captain, from time to time, as occasion may require, to convene District Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command, who is subject to Indian Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

Provided always that the power granted in this Warrant is only to be exercised in respect of accused persons whose trial has been ordered from Army Head-Quarters or by

the Officer Commanding the _____ Brigade

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at _____ this _____ day of _____
19 _____

(Signature of Officer having power
to convene General Courts-Martial.)

(Signature of Staff Officer.)

* This warrant is issued to officers commanding at small stations, by the officer commanding the district concerned.



ADDENDUM.

RULES UNDER THE INDIAN TERRITORIAL FORCE ACT, 1920.

No. 1583.— In exercise of the powers conferred by sub-section (2) of section 17 of the Indian Territorial Force Act, 1920 (XIV of 1920), the Governor General in Council is pleased to make the following rules:—

1. These rules may be called the Indian Territorial Force short title Rules, 1921

2. In these rules, unless there is anything repugnant in the definitions, subject or context,—

- (a) "the Act" means the Indian Territorial Force Act, 1920;
- (b) "Form" means a Form as set out in Schedule I;
- (c) "regulations" means regulations made under section 14;
- (d) "Schedule" means a Schedule to these rules;
- (e) "section" means a section of the Act;
- (f) "training year" means a period of twelve months beginning on the first day of April and ending on the thirty-first day of March;
- (g) the expressions "Commanding Officer" and "Officer Commanding the corps or unit" include, in respect of any corps or unit other than a University Corps, the Adjutant of the corps or unit when that corps or unit is not embodied for training or military service.
- (h) the expression "Officer Commanding the District" means the General or other officer in command of the military district or other area within which the headquarters of a corps or unit constituted under the Act are situated.
- (i) The expression "General Officer Commanding-in-Chief the Command" shall include in respect of units in Burma the Officer Commanding the Burma District.

PART I.

ENROLMENT.

3. Every person offering himself for enrolment shall fulfil the following conditions:—

- (a) he shall not be a person who is a member of a criminal tribe within the meaning of the Criminal Tribes Act, 1911, or who has at any time been sentenced to a term of transportation or imprisonment, or to whipping, or who has been ordered under the provisions of the Code of Criminal Procedure, 1898, to give security for his good behaviour, such sentence or order not having been subsequently reversed or remitted or the offender pardoned;

XLVIII of 1921.

III of 1911.

Act V of 1898

Conditions of enrolment.

....

(56)

allow no caste charges to interfere with your military duty?

3. Are you willing to serve 15. the term of the Regular Army

12. Are you willing to serve 15. until discharged as provided in the Act?

13. Have you ever previously 12. applied for enrolment under the Act and, if so, with what result?

14. Have you been dismissed 17. from the Indian Territorial Force?

Signature

I hereby declare that the answers I have given to the questions are true and that no part of them is false and that I am willing to fulfil the engagement made

Signature

Completed that the applicant understands and agrees to the conditions of enrolment.

Signature of Enrolling Officer

FORM 1

THE OFFICER

I hereby certify that I am a British subject and have been so since birth. I am a member of the Indian Territorial Force and have been so since the 1st day of January 1914. I am a member of the Indian Territorial Force and have been so since the 1st day of January 1914. I am a member of the Indian Territorial Force and have been so since the 1st day of January 1914.

Signature of Enrolling Officer

4. (1) the officer he desires officer or a enrolment o to the Distr. narily resides the Local Govt.

(2) The officer sub-rule (1) has and sign in his Form I.

(3) When the other than the officer empowered under sub-rule 1, the Form referred to the corps or unit for a be enrolled.

(4) Applications of University Corps must the College of which the Registrar of the University

5. When an applicant received by, the officer shall satisfy himself in by the Local Government that the applicant fulfils the in rule 3, and may make such regarding the suitability of a unit in which he desires to be

6. If the commanding officer is in order, that the application and that he is suitable

Application for enrolment.

Signature of Enrolling Officer

ADDENDUM.

RULES UNDER THE INDIAN TERRITORIAL FORCE ACT, 1920.

No. 1583.—In exercise of the powers conferred by sub-section (1) of section 13 of the Indian Territorial Force Act, 1920 (XLVIII of 1920), the Governor General in Council is pleased to make the following rules:—

1. These rules may be called the Indian Territorial Force Rules, 1921.

2. In these rules, unless there is anything repugnant in the subject or context,—

- (a) "the Act" means the Indian Territorial Force Act, 1920;
- (b) "Form" means a form as set out in Schedule 1;
- (c) "regulations" means regulations made under section 14;
- (d) "Schedule" means a Schedule to these rules;
- (e) "section" means a section of the Act;
- (f) "training year" means a period of twelve months beginning on the first day of April and ending on the thirty-first day of March;
- (g) the expressions "Commanding Officer" and "Officer Commanding the corps or unit" include, in respect of any corps or unit other than a University Corps, the Adjutant of the corps or unit when that corps or unit is not embodied for training or military service.
- (h) the expression "Officer Commanding the District" means the General or other officer in command of the military district or other area within which the headquarters of a corps or unit constituted under the Act are situated.
- (i) The expression "General Officer Commanding-in-Chief the Command" shall include in respect of units in Burma the Officer Commanding the Burma District.

PART I.

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- (a) he shall not be a person who is a member of a criminal tribe within the meaning of the Criminal Tribes Act, 1911, or who has at any time been sentenced to a term of transportation or imprisonment, or to whipping, or who has been ordered under the provisions of the Code of Criminal Procedure, 1898, to give security for his good behaviour, such sentence or order not having been subsequently reversed or remitted or the offender pardoned;

allow no caste usages to interfere with your military duty?

Note.—Non-interference with caste usages will be observed exactly as in the case of the Regular Army.

13. Are you willing to serve 15.
until discharged as provided
in the Act?
16. Have you ever previously 16.
applied for enrolment under
the Act and, if so, with what
result?
17. Have you been dismissed 17.
from the Indian Territorial
Force?

Signature

Declaration to be signed on application for enrolment.—I solemnly declare that the answers I have given to the questions in this form are true and that no part of them is false, and that I am willing to fulfil the engagement made.

Signature

Certified that the applicant understands and to the conditions of enrolment.

Signature of Enrol

FORM IV

Form I

I do swear that I will be
to His Majesty the King,
and that I will, as in duty
borne in the Indian Territory,
may be ordered by him or
all lawful commands of any
part of my life.

Swear to
the on
the
go
about
the

Form II

I solemnly affirm that I
allegiance to His Majesty in
successors, and that I will
faithfully serve in the In
wherever I may be ordered by
all lawful commands of any
part of my life.

Dox ^{Swear}
Affirmed before me

Date

Note.—In the case of Form I, the
affirmation is in the form of oath and

SCHEDULE II.

(See rule 17.)

MODIFICATIONS OF THE INDIAN ARMY ACT, 1911.

- 1 Sections 2 to 6, 8 to 12 and 15 to 18 shall be omitted.
2. In sub-section (2) of section 20, for the words "twenty eight days" the words "ten days" shall be substituted.
3. In sections 26, 28 and 34 after the word "imprisonment" the words "for a term not exceeding one year" shall be inserted.
4. In section 29 for the word "death" the words "imprisonment for a term not exceeding six months" shall be substituted.
5. In sections 30 and 31 after the word "imprisonment" the words "for a term not exceeding six months" shall be inserted.
6. In section 32 after the word "imprisonment" the words "for a term not exceeding two months" shall be inserted.
7. In sections 35, 36, 37, 38 and 39 after the word "imprisonment" the words "for a term not exceeding six months" shall be inserted.
8. Sections 41, 45, 46, 49A, 52A, 114, 115, 116, 126 and 127 shall be omitted.

MODIFICATIONS OF THE INDIAN ARMY ACT RULES.

1. Chapters II and III shall be omitted.
2. Rules 159 and 160 shall be omitted.
3. In rule 161, sub-rules (A) and (B) shall be omitted, and to sub-rule (C) the following shall be added, namely:—
 "(xx) each corps or unit constituted under section 4. of the Indian Territorial Force Act, 1920."
4. Rules 162 and 162A shall be omitted.
5. Sub-rule (C) of rule 163 shall be omitted.
6. Rules 163A and 165 shall be omitted.

SCHEDULE III.

RATES OF PAY, ALLOWANCES, AND BOUNTIES, ADMISSIBLE UNDER
RULE 17 (1).*Pay and Allowances.*

1. *Senior Officers* (other than officers of Medical Branch)—
 - (i) Pay of rank as for corresponding ranks of the British service in India.
 - (ii) Camp allowance of Rs. 5 per day for every day of actual attendance at preliminary or periodical training in camp, provided that a period of 3 consecutive days at any one spent in camp.

allow no caste usages to
interfere with your military
duty?

NOTE.—Non-interference with caste usages will be observed exactly as in the case of the Regular Army.

15. Are you willing to serve 15.
until discharged as provided
in the Act?
16. Have you ever previously 16.
applied for enrolment under
the Act and, if so, with what
result?
17. Have you been dismissed 17.
from the Indian Territorial
Force?

Signature

Declaration to be signed on acceptance for enrolment.—I solemnly declare that the answers I have given to the questions in this form are true and that no part of them is false, and that I am willing to fulfill the engagement made.

Signature

Certified that the applicant understands and agrees to the conditions of enrolment.

Signature of Enrolling Officer.

FORM II.

FORM OF OATH.

I do swear that I will be faithful and bear true allegiance to His Majesty the King-Emperor, His heirs and successors, and that I will, as in duty bound, honestly and faithfully serve in the Indian Territorial Force (and go wherever I may be ordered by land or sea), and I will observe and obey all lawful commands of any officer set over me even to the peril of my life.

FORM OF AFFIRMATION.

I solemnly affirm that I will be faithful and bear true allegiance to His Majesty the King-Emperor, His heirs and successors, and that I will, as in duty bound, honestly and faithfully serve in the Indian Territorial Force (and go wherever I may be ordered by land or sea), and I will observe all lawful commands of any officer set over me even to the peril of my life.

Only Sworn
Affirmed before me.

Signature of Attesting Officer.

Designation.

Date.

NOTE.—In the case of Urban and University Corps or Units, the words within brackets in the Form of Oath and Affirmation shall be omitted.

SCHEDULE II.

(See rule 1P.)

MODIFICATIONS OF THE INDIAN ARMY ACT, 1911.

1. Sections 2 to 6, 8 to 12 and 15 to 18 shall be omitted.
2. In sub-section (2) of section 20, for the words "twenty eight days" the words "ten days" shall be substituted.
3. In sections 26, 28 and 34 after the word "imprisonment" the words "for a term not exceeding one year" shall be inserted.
4. In section 23 for the word "death" the words "imprisonment for a term not exceeding six months" shall be substituted.
5. In sections 30 and 31 after the word "imprisonment" the words "for a term not exceeding six months" shall be inserted.
6. In section 32 after the word "imprisonment" the words "for a term not exceeding two months" shall be inserted.
7. In sections 35, 36, 37, 38 and 39 after the word "imprisonment" the words "for a term not exceeding six months" shall be inserted.
8. Sections 41, 45, 46, 49A, 52A, 114, 115, 116, 126 and 127 shall be omitted.

MODIFICATIONS OF THE INDIAN ARMY ACT RULES.

1. Chapters II and III shall be omitted.
2. Rules 159 and 160 shall be omitted.
3. In rule 161, sub-rules (A) and (B) shall be omitted, and to sub-rule (C) the following shall be added, namely:—
 "(xx) each corps or unit constituted under section 4 of the Indian Territorial Force Act, 1920."
4. Rules 162 and 162A shall be omitted.
5. Sub-rule (C) of rule 163 shall be omitted.
6. Rules 163A and 165 shall be omitted.

SCHEDULE III.

RATES OF PAY, ALLOWANCES, AND BOUNTIES, ADMISSIBLE UNDER
RULE 17 (1)*Pay and Allowances.*

- I. *Senior Officers* (other than officers of Medical Branch)—
 - (i) Pay of rank as for corresponding ranks of the British service in India.
 - (ii) Camp allowance of Rs. 5 per day for every day of actual attendance at preliminary or periodical training in camp, provided that a minimum period of 3 consecutive days at any one time is spent in camp.

allow no caste usages to interfere with your military duty?

NOTE—Non-interference with caste usages will be observed exactly as in the case of the Regular Army.

15. Are you willing to serve 15.
until discharged as provided
in the Act?

16. Have you ever previously 16.
applied for enrolment under
the Act and, if so, with what
result?

17. Have you been dismissed 17.
from the Indian Territorial
Force?

Signature

Declaration to be signed on acceptance for enrolment.—I solemnly declare that the answers I have given to the questions in this form are true and that no part of them is false, and that I am willing to fulfill the engagement made.

Signature

Certified that the applicant understands and agrees to the conditions of enrolment.

Signature of Enrolling Officer.

FORM II.

FORM OF OATH.

I do swear that I will be faithful and bear true allegiance to His Majesty the King-Emperor, His heirs and successors, and that I will, as in duty bound, honestly and faithfully serve in the Indian Territorial Force (and go wherever I may be ordered by land or sea), and I will observe and obey all lawful commands of any officer set over me even to the peril of my life.

FORM OF AFFIRMATION.

I solemnly affirm that I will be faithful and bear true allegiance to His Majesty the King-Emperor, His heirs and successors, and that I will, as in duty bound, honestly and faithfully serve in the Indian Territorial Force (and go wherever I may be ordered by land or sea), and I will observe all lawful commands of any officer set over me even to the peril of my life.

Duly ^{Sworn}_{Admined} before me.

Signature of Attesting Officer.

Designation.

Date.

NOTE—In the case of Urban and University Corps or Units, the words within brackets in the Form of Oath and Affirmation shall be omitted.

SCHEDULE II.

(See rule 18.)

MODIFICATIONS OF THE INDIAN ARMY ACT, 1911

1. Sections 2 to 6, 8 to 12 and 15 to 18 shall be omitted.
2. In sub-section (5) of section 20, for the words "twenty eight days" the words "ten days" shall be substituted.
3. In sections 20, 23 and 34 after the word "imprisonment" the words "for a term not exceeding one year" shall be inserted.
4. In section 23 for the word "death" the words "imprisonment for a term not exceeding six months" shall be substituted.
5. In sections 30 and 31 after the word "imprisonment" the words "for a term not exceeding six months" shall be inserted.
6. In section 32 after the word "imprisonment" the words "for a term not exceeding two months" shall be inserted.
7. In sections 35, 36, 37, 38 and 39 after the word "imprisonment" the words "for a term not exceeding six months" shall be inserted.
8. Sections 41, 45, 46, 49A, 52A, 114, 115, 116, 120 and 127 shall be omitted.

MODIFICATIONS OF THE INDIAN ARMY ACT RULES.

1. Chapters II and III shall be omitted.
2. Rules 159 and 160 shall be omitted.
3. In rule 161, sub-rules (A) and (B) shall be omitted, and to sub-rule (C) the following shall be added, namely:—
 "(xx) each corps or unit constituted under section 4. of the Indian Territorial Force Act, 1920."
4. Rules 162 and 162A shall be omitted.
5. Sub-rule (C) of rule 163 shall be omitted.
6. Rules 163A and 165 shall be omitted.

SCHEDULE III.

RATES OF PAY, ALLOWANCES, AND BOUNTIES, ADMISSIBLE UNDER RULE 17 (1).

Pay and Allowances.

- I. *Senior Officers* (other than officers of Medical Branch)—
 - (i) Pay of rank as for corresponding ranks of the British service in India.
 - (ii) Camp allowance of Rs. 5 per day for every day of actual attendance at preliminary or periodical training in camp, provided that a minimum period of 3 consecutive days at any one time is spent in camp.

[2] (never to I. A. A. are in thick type, those to Rules in italics)

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Persons of evidence of service in them

—Persons of evidence of service by

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Persons of evidence of service in them

—Persons of evidence of service by

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- (m)
(b) *Order*
(i)

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- (ii) Extra
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- (iii) Messing a
attending
at Army
otherwise.

IV. Bounties (Urban un)

- (a) Junior officers, &
men.—

For the completion, a
year of the period
down in these m
least one period
days or two perio
tive days each m
spent in camp, and
course laid down in

- (b) *Recruits*.—On completion of
military training laid down in

INDIAN TERRITORIAL FORCE ACT

SCHEDULE II

(See rule 11)

Modifications of the Indian Army Act, 1911

- 1 Sections 2 to 6, 8 to 12 and 15 to 18 shall be omitted.
- 2 In sub-section (1) of section 21 for the words "twelve days" the words "ten days" shall be substituted.
- 3 In sections 26, 27 and 28 after the word "prisonment" the words "for a term not exceeding six months" shall be inserted.
- 4 In section 29 for the word "death" the words "prisonment for a term not exceeding six months" shall be substituted.
- 5 In sections 30 and 31 after the word "prisonment" the words "for a term not exceeding six months" shall be inserted.
- 6 In section 32 after the word "prisonment" the words "for a term not exceeding two months" shall be inserted.
- 7 In sections 33, 34, 35, 36 and 37 after the word "prisonment" the words "for a term not exceeding six months" shall be inserted.
- 8 Sections 41, 42, 43, 44A, 45A, 46, 47, 48, 49, 50 and 51 shall be omitted.

Modifications of the Indian Army Act, 1911

- 1 Chapters II and III shall be omitted.
- 2 Rules 159 and 161 shall be omitted.
- 3 In rule 161, sub-rules (A) and (B) shall be omitted and to sub-rule (C) the following shall be added, namely:—
“(xx) each corps or unit constituted under section 1 of the Indian Territorial Force Act, 1911.”
- 4 Rules 162 and 162A shall be omitted.
- 5 Sub-rule (C) of rule 163 shall be omitted.
- 6 Rules 163A and 163 shall be omitted.

SCHEDULE III.

RATES OF PAY, ALLOWANCES, AND BOUNTIES, & MISCELLANEOUS Rule 17 (1).

Pay and Allowances.

- I. Senior Officers (other than officers of Medical Branch)
 - (i) Pay of rank as for corresponding ranks in British service in India.
 - (ii) Camp allowance of Rs. 5 per day for every actual attendance at preliminary or general training in camp, provided that a minimum period of 3 consecutive days at any one time spent in camp.

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